LIST OF AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council of California on August 27, 2004

Title One, Appellate Rules—Division I, Rules Relating to the Supreme Court and Courts of Appeal—Chapter 1, Rules on Appeal—Part VIII, Appeals and Writs in Juvenile Cases, amended effective January 1, 2005.

PART VIII. Appeals and Writs in Juvenile Cases

Rule 37. Appeals in juvenile cases generally

(a) Application

Rules 37–38.6 govern:

(1) appeals from judgments or appealable orders in

(A) dependency and delinquency cases under the Welfare and Institutions Code and

(B) actions to free a child from parental custody and control under Family Code section 7800 et seq.; and

(2) writ petitions under Welfare and Institutions Code sections 366.26 and 366.28.

(b) Confidentiality

(1) Except as provided in (3), the record on appeal and documents filed by the parties may be inspected only by reviewing court and appellate project personnel, the parties or their attorneys, and other persons the court may designate.

(2) To protect anonymity, a party must be referred to by first name and last initial in all filed documents and court orders and opinions; but if the first name is unusual or other circumstances would defeat the objective of anonymity, the party's initials may be used.

(3) Filed documents that protect anonymity as required by (2) may be inspected by any person or entity that is considering filing an amicus curiae brief.

(4) The court may limit or prohibit public admittance to oral argument.

(c) Notice of appeal

(1) To appeal from a judgment or appealable order under these rules, the appellant must file a notice of appeal in the superior court. The appellant or the appellant's attorney must sign the notice.

(2) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be treated as taken to the Court of Appeal for the district in which the superior court is located.

(d) Time to appeal

(1) Except as provided in (2) and (3), a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. Except as provided in rule 45.1, no court may extend the time to file a notice of appeal.

(2) In matters heard by a referee not acting as a temporary judge, a notice of appeal must be filed within 60 days after the referee's order becomes final under rule 1417(c).

(3) When an application for rehearing of an order of a referee not acting as a temporary judge is denied under rule 1418, a notice of appeal from the referee's order must be filed within 60 days after that order is served under rule 1416(b)(3) or 30 days after entry of the order denying rehearing, whichever is later.

(4) If an appellant timely appeals from a judgment or appealable order, the time for any other party to appeal from the same judgment or order is extended until 20 days after the superior court clerk mails notification of the first appeal.

(e) Premature or late notice of appeal

(1) A notice of appeal is premature if filed before the judgment is rendered or the order is made, but the reviewing court may treat the notice as filed immediately after the rendition of judgment or the making of the order.

(2) The superior court clerk must mark a late notice of appeal "Received [date] but not filed," notify the party that the notice was not filed because

it was late, and send a copy of the marked notice of appeal to the district appellate project.

(f) Superior court clerk's duties

(1) When a notice of appeal is filed, the superior court clerk must immediately:

(A) mail a notification of the filing to each party—including the minor—other than the appellant, to all attorneys of record, and to the reviewing court clerk, and

(B) notify the reporter by telephone and in writing to prepare a reporter's transcript and deliver it to the clerk within 20 days after the notice of appeal is filed.

(2) The clerk must immediately mail a notification of the filing to any de facto parent, any Court Appointed Special Advocate, and any Indian tribe that has appeared in the proceedings.

(3) The notification must show the name of the appellant, the date it was mailed, the number and title of the case, and the date the notice of appeal was filed. If the information is available, the notification must also include:

(A) the name, address, telephone number, and California State Bar number of each attorney of record in the case;

(B) the name of the party that each attorney represented in the superior court; and

(C) the name, address, and telephone number of any unrepresented party.

(4) The notification to the reviewing court clerk must also include a copy of the notice of appeal and any sequential list of reporters made under rule 980.4.

(5) A copy of the notice of appeal is sufficient notification if the required information is on the copy or is added by the superior court clerk.

(6) The mailing of a notification is a sufficient performance of the clerk's duty despite the discharge, disqualification, suspension, disbarment, or death of the attorney.

(7) Failure to comply with any provision of this subdivision does not affect the validity of the notice of appeal.

Rule 37 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 37 principally restates subdivisions (a)–(b) and (e)–(g) of former rule 39.

Subdivision (a). Revised rule 37(a)(2) fills a gap by specifying that the rules in this part also apply to certain writ petitions under the Welfare and Institutions Code.

Subdivision (b). Revised rule 37(b) is former rule 39(f)–(g). In a substantive change, revised rule 37(b)(1) authorizes appellate project personnel to inspect the record on appeal and documents filed by the parties. Appellate project personnel may need access to these documents in order to discharge their duties in juvenile cases.

Former rule 39 was silent on the question of how to preserve the anonymity of parties to juvenile appeals. The practice, however, is to do so by referring to a party by first name and last initial unless it would defeat the objective of anonymity, in which case the party's initials alone may be used. (See *California Style Manual* (4th ed. 2000) §§ 5:9, 5:10, 6:18.) Revised rule 37(b)(2) follows this practice.

Filling a gap, revised rule 37(b)(3) authorizes any person or entity that is considering filing an amicus curiae brief to inspect filed documents that protect the anonymity of the parties as required by revised rule 37(b)(2). A potential amicus curiae's need for this access is underscored by the requirement that an application for permission to file an amicus curiae brief explain how the proposed brief "will assist the court in deciding the matter." (Rules 13(c)(2), 29.1(f)(3).) The change is substantive.

Subdivision (c). Revised rule 37(c) is derived from rule 30(a).

Subdivision (d). Filling a gap, revised rule 37(d)(4) provides for the time to file a cross-appeal. (See rule 3(e)(1).)

Subdivision (e). Revised rule 37(e) is derived from rule 30.1(b)–(c).

Subdivision (f). The requirement of revised rule 37(f)(1) that the superior court clerk notify the affected minor of the filing of the notice of appeal is derived from former rule 39.1B(f) (now revised rule 38(f)); the requirement that the clerk notify the reviewing court and the reporter is derived from rule 30(c)(1).

The requirement of revised rule 37(f)(1)(B) that the clerk notify the reporter not only in writing but also by telephone is derived from former rule 39.1A(c) (now revised rule 38(g)(1)). It implements the Legislature's intent that appeals in dependency and delinquency cases be treated expeditiously. (See, e.g., Welf. & Inst. Code, §§ 395, 800 [such appeals must be given precedence "over all other cases"].)

Former rule 39(b) limited to *dependency* cases the requirement that the clerk mail a notification of the filing of a notice of appeal to "any defendant facto parent, any court-appointed special advocate, and . . . the tribe of an Indian child." Because such parents, advocates, or tribes may also be involved in delinquency cases, revised rule 37(f)(2) deletes the limitation. And because the interest of a tribe does not necessarily coincide with that of one of its members, the revised subdivision requires that the clerk notify only a tribe "that has appeared in the proceedings." These are substantive changes.

Revised rule 37(f)(3) requires the clerk to include the name of the appellant in a notification of the filing of a notice of appeal. This substantive change facilitates early settlement discussions in multiparty cases. The remainder of revised rule 37(f)(3)–(7) is derived from rule 30(c)(2)–(6).

Former subdivision (e). Former rule 39(e) is deleted as unnecessary; it restated existing statutory provisions giving juvenile appeals precedence (Welf. & Inst. Code, §§ 395, 800) and was primarily directed to the reviewing courts.

Rule 37.1. Record on appeal

(a) Normal record: clerk's transcript

The clerk's transcript must contain:

(1) the petition;

(2) any notice of hearing;

(3) all court minutes;

(4) any report or other document submitted to the court;

(5) the jurisdictional findings;

(6) the judgment or order appealed from;

(7) any application for rehearing;

(8) the notice of appeal and any order pursuant to the notice;

(9) any transcript of a sound or sound-and-video recording tendered to the court under rule 243.9;

(10) any application for additional record and any order on the application; and

(11) any opinion or dispositive order of a reviewing court in the same case.

(b) Normal record: reporter's transcript

The reporter's transcript must contain:

(1) except as provided in (2), the oral proceedings at any hearing that resulted in the order or judgment being appealed;

(2) in appeals from dispositional orders, the oral proceedings at hearings on

(A) jurisdiction and disposition and

(B) any motion by the appellant that was denied in whole or in part; and

(3) any oral opinion of the court.

(c) Application in superior court for addition to normal record

(1) Any party may apply to the superior court for inclusion in the record of any of the following items:

(A) in the clerk's transcript: any written motion or notice of motion by any party, with supporting and opposing memoranda and attachments, and any written opinion of the court; and

(B) in the reporter's transcript: the oral proceedings on any prehearing motions.

(2) The application and order are governed by rule 31.1(c)–(d).

(d) Agreed or settled statement

To proceed by agreed or settled statement, the parties must comply with rule 32.2 or 32.3, as applicable.

(e) Form of record

Except in cases governed by rule 37.4(b), the clerk's and reporter's transcripts must comply with rule 9.

(f) Transmitting exhibits

Exhibits that were admitted in evidence, refused, or lodged may be transmitted to the reviewing court as provided in rule 18.

Rule 37.1 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 37.1 principally restates former rule 39(c)–(d).

Subdivision (a). Former rule 39(c)(1) declared that the normal clerk's transcript on appeal included "any notice of hearing *addressed to the minor, the parent, or guardian*." Revised rule 37.1(a)(2) deletes the italicized qualification because it made the designation underinclusive: it excluded, for example, a notice of hearing given under the federal Indian Child Welfare Act, which must also be included in the clerk's transcript.

Revised rule 37.1(a)(4) combines and simplifies the provisions of former rule 39.1A(c)(4)–(5). Under the former rules, the required components of the clerk's transcript in an appeal from an order terminating parental rights differed from the required components of the clerk's transcript in every other juvenile appeal. Revised rule 37.1(a)(4) requires that the same clerk's transcript be prepared in all juvenile appeals. This substantive change is intended to eliminate any possible confusion or delays caused by the inconsistent record requirements of the former rules.

Revised rule 37.1(a)(9) is derived from rule 31(b)(11).

Revised rule 37.1(a)(10) is derived from rule 31(b)(12).

Revised rule 37.1(a)(11) fills an important gap. An earlier opinion of the reviewing court in the same case should be part of the record on appeal.

Subdivision (b). Former rule 39(c)(2) required that the normal record include reporter's transcripts of all hearings in a juvenile case except the detention hearing, regardless of which order was being appealed. Former rule 39.1A(c)(1), however, provided that in appeals from orders terminating parental rights the normal record must include reporter's transcripts of only those portions of the hearing from which the appeal was taken. Revised rule 37.1(b)(1) essentially adopts the position of former rule 39.1A(c)(1) and establishes the general rule that only the reporter's transcript of a hearing that resulted in the order being appealed must be included in the normal record. This substantive change is intended to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by transcribing proceedings not necessary to the appeal.

Revised rule 37.1(b)(2)(A) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing dispositional order. The revised rule therefore specifically provides that a reporter's transcript of jurisdictional proceedings must be included in the normal record on appeal from a dispositional order.

Revised rule 37.1(b)(2)(B) specifies that the oral proceedings on any motion by the appellant that was denied in whole or in part must be included in the normal record on appeal from a disposition order. Rulings on such motions usually have some impact on either the jurisdictional findings or the subsequent disposition order. Former rule 39(d) permitted a party to request inclusion of these proceedings in the reporter's transcript, but the need to seek augmentation often caused delays in the preparation of the record. Routine inclusion of these proceedings in the record will promote expeditious resolution of juvenile appeals. This is a substantive change.

Former rule 39(c)(2) required the reporter's transcript to include the oral proceedings in the trial court, "excluding opening statements." Because such statements are often combined with evidentiary requests and rulings, the requirement is difficult for reporters to meet; revised rule 37.1(b) deletes it in the interest of efficiency. The change is substantive.

Subdivisions (d) and (e). Revised rule 37.1(d)–(e) fills gaps consistently with practice.

Subdivision (f). Revised rule 37.1(f) restates provisions of former rule 39(c)(3) and (d)(3); it is derived from rule 33.1.

Rule 37. 2. Preparing, sending, augmenting, and correcting the record

(a) Application

Except as provided in (b), this rule does not apply to cases under rule 37.4.

(b) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

(1) the clerk must prepare and certify as correct an original of the clerk's transcript and sufficient copies to comply with (d), and

(2) the reporter must prepare, certify as correct, and deliver to the clerk an original of the reporter's transcript and the same number of copies as (1) requires of the clerk's transcript.

(c) Extension of time

(1) The superior court may not extend the time to prepare the record.

(2) The reviewing court may order one or more extensions of time, not exceeding a total of 60 days, on receipt of:

(A) an affidavit showing good cause, and

(B) in the case of a reporter's transcript, certification by the superior court presiding judge, or a court administrator designated by the presiding judge, that an extension is reasonable and necessary in light of the workload of all reporters in the court.

(d) Sending the record

(1) When the transcripts are certified as correct, the superior court clerk must immediately send:

(A) the original transcripts to the reviewing court, noting the sending date on each original, and

(B) one copy of each transcript to the appellate counsel for the appellant, the respondent, and the minor.

(2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copy of the transcripts to the district appellate project.

(3) The clerk must not send a copy of the transcripts to the Attorney General or the district attorney unless that office represents a party.

(e) Augmenting and correcting the record in the reviewing court

(1) Rule 32.1(a)–(b) governs augmentation of the record without court order.

(2) On request of a party or on its own motion, the reviewing court may order the record augmented or corrected as provided in rule 12(a) and (c).

Rule 37.2 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 37.2 fills a number of gaps. It is derived from former rule 39.1A and the rules governing appeals from the superior court in criminal cases (rules 30–33.2).

Subdivision (a). New rule 37.2(a) calls litigants' attention to the fact that a different rule (revised rule 37.4) governs *sending, augmenting, and correcting* the record in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties. New rule 37.2(b) governs *preparing and certifying* the record in those appeals. (See revised rule 37.4(a)(2) ["In all respects not provided for in this rule, rules 37–37.3 apply."].)

Subdivision (b). New rule 37.2(b) requires the record to be prepared within 20 days after the notice of appeal is filed. The requirement is based on former rule 39.1A(c).

Subdivision (c). As provided in criminal appeals by rule 32(e)(2), new rule 37.2(c) limits extensions of time to prepare the record to a total of 60 days and, to support an order of the reviewing court extending the time to prepare a reporter's transcript, requires that the superior court presiding judge or court administrator certify that the extension is reasonable and necessary in light of the workload of all reporters in the court.

Subdivision (d). As provided in criminal appeals by rule 32(f)(2), new rule 37.2(d)(1)(A) requires the clerk to note, on the originals of the clerk's and reporter's transcripts, the date they were sent to the reviewing court.

New rule 37.2(d)(2) fills a gap and reflects current practice (see also rules 31.2(a)(3)(B) and 32(f)(2)).

New rule 37.2(d)(3) is former rule 39.1(c).

Subdivision (e). New rule 37.2(e) is derived from rule 32.1 and former rule 39.1A(d).

Rule 37.3. Briefs

(a) Contents, form, and length

Rule 33(a)–(b) governs the contents, form, and length of briefs.

(b) Time to file

(1) Except in cases governed by rule 37.4(e), the appellant must serve and file the appellant's opening brief within 40 days after the record is filed in the reviewing court.

(2) The respondent must serve and file the respondent's brief within 30 days after the appellant's opening brief is filed.

(3) The appellant must serve and file any reply brief within 20 days after the respondent's brief is filed.

(4) In dependency cases in which the minor is not an appellant but has appellate counsel, the minor must serve and file any brief within 10 days after the respondent's brief is filed.

(5) Rule 17 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days.

(c) Extensions of time

The superior court may not order any extensions of time to file briefs. Except in cases governed by rule 37.4(f), the reviewing court may order extensions of time for good cause.

(d) Additional service requirements

(1) A copy of each brief must be served on the superior court clerk for delivery to the superior court judge.

(2) If the Court of Appeal has appointed counsel for any party:

(A) the county child welfare department and the People must serve two copies of their briefs on that counsel, and

(B) each party must serve a copy of its brief on the district appellate project.

(3) In delinquency cases the parties must serve copies of their briefs on the Attorney General and the district attorney. In all other cases the parties must not serve copies of their briefs on the Attorney General or the district attorney unless that office represents a party.

(4) The parties must not serve copies of their briefs on the Supreme Court under rule 44(b)(2)(A).

Rule 37.3 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 37.3 fills a gap. It is derived from former rule 39.1A(g) and the rules governing appeals from the superior court in criminal cases (rules 30–33.2).

Subdivision (b). New rule 37.3(b)(1) calls litigants' attention to the fact that a different rule (revised rule 37.4(e)) governs the time to file an appellant's opening brief in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Former rule 39 did not provide for briefs by minors represented by counsel or for replies to such briefs; former rule 39.1A(g) provided for a minor's brief in an appeal from a judgment terminating parental rights but did not provide for a reply to the minor's brief, and effectively excluded the latter by requiring the appellant's reply brief to be served and filed at the same time as the minor's brief. These provisions often required the reviewing courts to extend time in cases in which they appointed counsel for the minor, resulting in different filing requirements for such briefs in different reviewing courts. For the purpose of remedying these inadequacies, new rule 37.3(b)(4) provides that a minor who is not the appellant but has appellate counsel must file any brief within 10 days after the respondent's brief is filed. The 10-day period is derived from former rule 39.2A(f); it is believed adequate because in most cases in which the minor needs separate counsel, any brief by the minor in effect responds to (or supports) the opening brief. Because the appellant must file any reply brief within 20 days after the respondent's brief is filed (new rule 37.3(b)(3)), the appellant has the opportunity to reply to both the respondent's brief and any minor's brief in the same document. The changes are substantive.

Subdivision (c). New rule 37.3(c) calls litigants' attention to the fact that a different rule (revised rule 37.4(f)) governs the showing required for extensions of time to file briefs in appeals from judgments or orders terminating parental rights and in dependency appeals in certain counties.

Subdivision (d). New rule 37.3(d)(2) is derived from former rule 39.1(d) and is made consistent with the rule on the number of copies of their briefs the People are required to serve in criminal cases (rule 33(d)(3)).

New rule 37.3(d)(3) is derived from rule 33(d)(1) and former rule 39.1(d).

New rule 37.3(d)(4) is derived from former rule 39.1(e).

Rule 37.4. Appeals from all terminations of parental rights; dependency appeals in Orange, Imperial, and San Diego Counties

(a) Application

(1) This rule governs:

(A) appeals from judgments or appealable orders of all superior courts terminating parental rights under Welfare and Institutions Code 366.26 or freeing a child from parental custody and control under Family Code section 7800 et seq., and

(B) appeals from judgments or appealable orders of the Superior Courts of Orange, Imperial, and San Diego Counties in all juvenile dependency cases.

(2) In all respects not provided for in this rule, rules 37–37.3 apply.

(b) Cover of record

(1) In appeals under (a)(1)(A), the cover of the record must prominently display the title "Appeal From [Judgment or Order] Terminating Parental Rights Under [Welfare and Institutions Code Section 366.26 or Family Code Section 7800 et seq.]," whichever is appropriate.

(2) In appeals from judgments or appealable orders of the Superior Courts of Orange, Imperial, and San Diego Counties, the cover of the record must prominently display the title "Appeal From [Judgment or Order] Under [Welfare and Institutions Code Section 300 et seq. or Family Code Section 7800 et seq.]," whichever is appropriate.

(c) Sending the record

(1) When the clerk's and reporter's transcripts are certified as correct, the clerk must immediately send:

(A) the original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, and

(B) one copy of each transcript to the attorneys of record for the appellant, the respondent, and the minor, and to the district appellate project, by any method as fast as United States Postal Service express mail.

(2) If appellate counsel has not yet been retained or appointed when the transcripts are certified as correct, the clerk must send that counsel's copies of the transcripts to the district appellate project.

(d) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 12 governs any augmentation or correction of the record.

(2) An appellant must serve and file any request for augmentation or correction within 15 days after receiving the record. A respondent must serve and file any such request within 15 days after the appellant's opening brief is filed.

(3) The clerk and the reporter must prepare any supplemental transcripts within 20 days, giving them the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by (c).

(e) Time to file appellant's opening brief

To permit determination of the appeal within 250 days after the notice of appeal is filed, the appellant must serve and file the appellant's opening brief within 30 days after the record is filed in the reviewing court.

(f) Extensions of time

The superior court may not order any extensions of time to prepare the record or to file briefs; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(g) Oral argument and submission of the cause

(1) Unless the reviewing court orders otherwise, counsel must serve and file any request for oral argument no later than 15 days after the appellant's reply brief is filed or due to be filed. Failure to file a timely request will be deemed a waiver.

(2) The court must hear oral argument within 60 days after the appellant's last reply brief is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(3) If counsel waive argument, the cause is deemed submitted no later than 60 days after the appellant's reply brief is filed or due to be filed.

Rule 37.4 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 37.4 combines former rules 39.1A, 39.2, and 39.2A, but deletes all provisions of those rules that expressly or in effect duplicated revised rules 37–37.3. Subdivisions (b) and (e) of former rule 39.1A were deleted because they expressly or in effect duplicated provisions of Welfare and Institutions Code section 366.26(*l*). No substantive change is intended.

Subdivision (e). Revised rule 37.3(b)(5) provides that "Rule 17 applies if a party fails to timely file an appellant's opening brief or a respondent's brief, but the period specified in the notice required by that rule must be 30 days." Revised rule 37.4(a)(2) makes the quoted provision applicable to all appeals governed by revised rule 37.4(e).

Subdivision (g). Revised rule 37.4(g)(1) recognizes certain reviewing courts' practice of requiring counsel to file any request for oral argument within a time period other than 15 days after the appellant's reply brief is filed or due to be filed. It is not a substantive change. The reviewing court is still expected to determine the appeal "within 250 days after the notice of appeal is filed." (*Id*., subd. (e).)

Rule 38. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Application

Rules 38–38.1 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26. Rule 56 does not apply to petitions governed by these rules.

(b) Purpose

Rules 38–38.1 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the 120-day period for holding a hearing under Welfare and Institutions Code section 366.26.

(c) Who may file

The petitioner's trial counsel—or, if the petitioner was not represented by counsel at the hearing at which the section 366.26 hearing was set, the petitioner—is responsible for filing any notice of intent and writ petition under rules 38–38.1. Trial counsel is encouraged to seek assistance from or consult with attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not extend any time period prescribed by rules 38–38.1. The reviewing court may extend any time period, but must require an exceptional showing of good cause.

(e) Notice of intent

(1) A party seeking writ review under rules 38–38.1 must file a notice of intent to file a writ petition and a request for the record.

(2) The notice must include all known dates of the hearing that resulted in the order under review.

(3) The notice must be signed by the party intending to file the petition or, if filed on behalf of the minor, by the attorney of record for the minor. The reviewing court may waive this requirement for good cause on the basis of a declaration by the attorney of record explaining why the party could not sign the notice.

(4) The notice must be filed within seven days after the date of the order setting the hearing or, if the order was made by a referee not acting as a temporary judge, within seven days after the referee's order becomes final under rule 1417(c). The date of the order setting the hearing is the date on which the court states the order on the record orally or in writing, whichever occurs first.

(5) If the party was notified of the order setting the hearing only by mail, the notice of intent must be filed within 12 days after the date that the clerk mailed the notification.

(f) Sending the notice of intent

(1) When the notice of intent is filed, the superior court clerk must immediately mail a copy of the notice to:

(A) each counsel of record;

(B) each party, including the minor, the parent, the present custodian of a dependent child, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings;

(C) the probation officer or social worker; and

(D) any Court Appointed Special Advocate.

(2) The clerk must promptly send a copy of the notice of intent and a proof of service list to the reviewing court, by first-class mail or facsimile. If the party was notified of the order setting the hearing only by mail, the clerk must include the date that the notification was mailed.

(g) Preparing the record

When the notice of intent is filed, the superior court clerk must:

(1) immediately notify the reporter by telephone and in writing to prepare a reporter's transcript of the oral proceedings at the hearing that resulted in the order under review and deliver the transcript to the clerk within 12 days after the notice of intent is filed; and

(2) within 20 days after the notice of intent is filed, prepare a clerk's transcript that includes the notice of intent, proof of service, and all items listed in rule 37.1(a).

(h) Sending the record

When the transcripts are certified as correct, the superior court clerk must immediately send:

(1) the original transcripts to the reviewing court by the most expeditious method, noting the sending date on each original, and

(2) one copy of each transcript to each counsel of record and any unrepresented party by any means as fast as United States Postal Service express mail.

(i) Reviewing court clerk's duties

(1) The reviewing court clerk must immediately lodge the notice of intent. When the notice is lodged, the reviewing court has jurisdiction of the writ proceedings.

(2) When the record is filed in the reviewing court, that court's clerk must immediately notify the parties, stating the date on which the 10-day period for filing the writ petition under rule 38.1(c)(1) will expire.

Rule 38 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 38 restates the portions of former rule 39.1B that provided for a *notice of intent* to file a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26. The portions of the former rule that provided for the petition itself are restated in revised rule 38.1.

Subdivision (d). Revised rule 38(d) is new. The case law generally recognizes that the reviewing courts may grant extensions of time under these rules for exceptional good cause. (See, e.g., *Jonathan M. v. Superior Court* (1995) 39 Cal.App.4th 1826, and *In re Cathina W.* (1998) 68 Cal.App.4th 716 [recognizing that a late notice of intent may be filed on a showing of exceptional circumstances not under the petitioner's control].) The provision is derived from revised rule 37.4(f).

Subdivision (e). Former rule 39.1B(f) declared that if a party was notified of the order setting the hearing only by mail, the 7-day period for filing a notice of intent to seek writ review was extended by 5 days measured from the date of *the order setting the hearing*. Revised rule 38(e)(5) prescribes the same total time (12 days) in that case, but measures the period from the date *the notification is mailed.* The purpose of this substantive change is to ensure that if mailing of the notification is delayed the party still has adequate time to prepare and file any notice of intent.

Subdivision (f). To implement the change in revised rule 38(e)(5) discussed in the preceding comment, revised rule 38(f)(2) provides that if the party was notified of the order setting the hearing only by mail, the clerk must advise the reviewing court of the date that the notification was mailed.

Subdivision (g). In the interest of completeness, revised rule 38(g)(2) specifies that the clerk's transcript must include, in addition to all items listed in revised rule 37.1(a), the notice of intent and proof of service.

Former rule 39.1B(d)-(e). Subdivisions (d) and (e) of former rule 39.1B were deleted because they expressly or in effect duplicated provisions of Welfare and Institutions Code section 366.26(*l*). No substantive change is intended.

Rule 38.1. Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Petition

(1) The petition must include:

(A) the identities of the parties;

(B) the date on which the superior court made the order setting the hearing;

(C) the date on which the hearing is scheduled to be held;

(D) a summary of the grounds of the petition; and

(E) the relief requested.

(2) The petition must be liberally construed.

(3) The petition must be accompanied by points and authorities.

(b) Contents of points and authorities

(1) The points and authorities must provide a summary of the significant facts, limited to matters in the record.

(2) The points and authorities must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.

(3) The points and authorities must support any reference to a matter in the record by a citation to the record. The points and authorities should explain the significance of any cited portion of the record and note any disputed aspects of the record.

(c) Time to file petition and response

(1) The petition must be served and filed within 10 days after the record is filed in the reviewing court.

(2) Any response must be served and filed:

(A) within 10 days—or, if the petition was served by mail, within 15 days—after the petition is filed, or

(B) within 10 days after a respondent receives a request from the reviewing court for a response, unless the court specifies a shorter time.

(d) Order to show cause or alternative writ

If the court intends to determine the petition on the merits, it must issue an order to show cause or alternative writ.

(e) Augmenting or correcting the record in the reviewing court

(1) Except as provided in (2) and (3), rule 12 governs any augmentation or correction of the record.

(2) The petitioner must serve and file any request for augmentation or correction within 5 days—or, if the record exceeds 600 pages, within 10 days—after receiving the record. A respondent must serve and file any such request within five days after the petition is filed.

(3) An order augmenting or correcting the record may grant no more than 15 days for compliance. The clerk and the reporter must give the order the highest priority.

(4) The clerk must certify and send any supplemental transcripts as required by rule 38(h).

(f) Stay

The reviewing court may stay the hearing set under Welfare and Institutions Code section 366.26, but must require an exceptional showing of good cause.

(g) Oral argument

(1) The reviewing court must hear oral argument within 30 days after the response is filed or due to be filed, unless the court extends the time for good cause or counsel waive argument.

(2) If argument is waived, the cause is deemed submitted not later than 30 days after the response is filed or due to be filed.

(h) Decision

(1) Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion.

(2) The reviewing court clerk must promptly notify the parties of any decision and must promptly send a certified copy of any writ or order to the court named as respondent.

(3) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(4) The reviewing court clerk need not give telephonic notice of the summary denial of a writ, unless a stay previously issued and will be dissolved.

Rule 38.1 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 38.1 restates the portions of former rule 39.1B that provided for a writ petition to review an order setting a hearing under Welfare and Institutions Code section 366.26. The portions of the former rule that provided for the *notice of intent* to file the petition are restated in revised rule 38.

Subdivision (a). Revised rule 38.1(a)(1) is new. It fills a gap, setting out the essential elements of a writ petition filed under this rule.

Subdivision (b). Revised rule 38.1(b) restates former rule 39.1B(j) but conforms it to the requirements of case law and the relevant provisions of rule 14.

Subdivision (d). Revised rule 38.1(d) tracks the second sentence of former rule 39.1B(*l*). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.)

Subdivision (e). Former rule 39.1B(o) required any augmentation or correction of the record to be conducted "under rule 12 or rule 35(e) [now rule 32.1]." In a substantive change intended to expedite these proceedings, revised rule 38.1(e)(1) limits the cross-reference to rule 12. The reviewing court should control the terms and conditions of augmentation or correction.

Revised rule 38.1(e)(4) fills a gap.

Subdivision (f). Revised rule 38.1(f) restates former rule 39.1B(p) but simplifies and broadens its wording in order to permit a stay, for example, when the time remaining before the scheduled date of the hearing under Welfare and Institutions Code section 366.26 is inadequate to permit proper review. The wording of the provision is consistent with revised rules 38(d) and 37.4(f).

Subdivision (h). Revised rule 38.1(h)(1) tracks former rule 39.1B(o). (But see *Maribel M. v. Superior Court* (1998) 61 Cal.App.4th 1469, 1471–1476.) The revised rule deletes as superfluous, however, the provision of the former rule requiring that in the absence of exceptional circumstances the reviewing court must "review the petition . . . ." The reviewing court must necessarily "review the petition" to determine whether there are any exceptional circumstances.

Former rule 39.1B(r) required the reviewing court clerk, in urgent situations, to give the respondent court clerk telephonic notice of a writ or order prohibiting any proceedings, but declared that telephonic notice of a summary denial was unnecessary "whether or not a stay was previously issued." To provide for the possibility of the reviewing court's issuing a stay but subsequently dissolving it and summarily denying relief, revised rule 38.1(h)(4) declares instead that the reviewing court clerk need not give such telephonic notice "unless a stay previously issued and will be dissolved."

Rule 38.4. Hearing and decision in the Court of Appeal

Except as provided in rules 37–38.4, rules 22–26 govern hearing and decision in the Court of Appeal in juvenile cases.

Rule 38.4 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Rule 38.4 is new, but it is not a substantive change. It clarifies the applicability to juvenile cases of the relevant rules governing the hearing and decision of civil appeals in the Court of Appeal.

Rule 38.5. Hearing and decision in the Supreme Court

Rules 28–28.9 govern hearing and decision in the Supreme Court in juvenile cases.

Rule 38.5 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Rule 38.5 is new, but it is not a substantive change. It clarifies the applicability to juvenile cases of the rules governing the hearing and decision of civil appeals in the Supreme Court.

Rule 38.6. Procedures and data

(a) Procedures

The judges and clerks of the superior courts and the reviewing courts must adopt procedures to identify the records and expedite the processing of all appeals and writs in juvenile cases.

(b) Data

The clerks of the superior courts and the reviewing courts must provide the data required to assist the Judicial Council in evaluating the effectiveness of the rules governing appeals and writs in juvenile cases.

Rule 38.6 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 38.6 restates former rules 39.1A(f), 39.2(e), and 39.2A(e).

PART IX. Miscellaneous Appeals

Rule 39. Appeal from order establishing conservatorship

(a) Application

Except as otherwise provided in this rule, rules 30–33.3 govern appeals from orders establishing conservatorships under Welfare and Institutions Code section 5350 et seq.

(b) Clerk's transcript

The clerk's transcript must contain:

(1) the petition;

(2) any demurrer or other plea;

(3) any written motion with supporting and opposing memoranda and attachments;

(4) any filed medical or social worker reports;

(5) all court minutes;

(6) all instructions submitted in writing, each noting the party requesting it;

(7) any verdict;

(8) any written opinion of the court;

(9) the judgment or order appealed from;

(10) the notice of appeal; and

(11) any application for additional record and any order on the application.

(c) Reporter's transcript

The reporter's transcript must contain all oral proceedings, excluding the voir dire examination of jurors and any opening statement.

(d) Sending the record

The clerk must not send a copy of the record to the Attorney General or the district attorney unless that office represents a party.

(e) Briefs

The parties must not serve copies of their briefs:

(1) on the Attorney General or the district attorney, unless that office represents a party, or

(2) on the Supreme Court under rule 44(b)(2)(A).

Rule 39 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 39 is former rule 39.4.

Rule 39.1. Appeal from judgment authorizing conservator to consent to sterilization of conservatee

(a) Application

Except as otherwise provided in this rule, rules 30–33.3 govern appeals from judgments authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee.

(b) When appeal is taken automatically

An appeal from a judgment authorizing a conservator to consent to the sterilization of a developmentally disabled adult conservatee is taken automatically, without any action by the conservatee, when the judgment is rendered.

(c) Superior court clerk's duties

After entering the judgment, the clerk must immediately:

(1) begin preparing a clerk's transcript and notify the reporter to prepare a reporter's transcript, and

(2) mail certified copies of the judgment to the Court of Appeal and the Attorney General.

(d) Clerk's transcript

The clerk's transcript must contain:

(1) the petition and notice of hearing;

(2) all court minutes;

(3) any application, motion, or notice of motion, with supporting and opposing memoranda and attachments;

(4) any report or other document submitted to the court;

(5) any transcript of a proceeding pertaining to the case;

(6) the statement of decision; and

(7) the judgment or order appealed from.

(e) Reporter's transcript

The reporter's transcript must contain all oral proceedings, including:

(1) all proceedings at the hearing on the petition, with opening statements and closing arguments;

(2) all proceedings on motions;

(3) any comments on the evidence by the court; and

(4) any oral opinion or oral statement of decision.

(f) Preparing and sending transcripts

(1) The clerk and the reporter must prepare and send an original and two copies of each of the transcripts as provided in rule 32.

(2) Probate Code section 1963 governs the cost of preparing the record on appeal.

(g) Confidential material

(1) Written reports of physicians, psychologists, and clinical social workers, and any other matter marked confidential by the court, may be inspected only by court personnel, the parties and their counsel, the district appellate project, and other persons designated by the court.

(2) Material under (1) must be sent to the reviewing court in a sealed envelope marked "Confidential—May Not Be Examined Without Court Order."

(h) Trial counsel's continuing representation

To expedite preparation and certification of the record, the conservatee's trial counsel must continue to represent the conservatee until appellate counsel is retained or appointed.

(i) Appointment of appellate counsel

If appellate counsel has not been retained for the conservatee, the reviewing court must appoint such counsel.

Rule 39.1 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 39.1 is former rule 39.8. It implements Probate Code section 1963(b).

Subdivision (a). Former rule 39.8(a) stated that it governed appeals from judgments "*authorizing the appointment of a limited conservator* to consent to sterilization" of a developmentally disabled adult conservatee. (Italics added.) But the statute addresses instead appeals from judgments "*authorizing the conservator of a person to consent* to the sterilization" (Prob. Code, § 1962(b), italics

added), and the power to consent is not restricted to a limited conservator (*id.*, § 1960). To conform to the statutes, revised rule 39.1(a) provides that it governs appeals from judgments "authorizing a conservator to consent" to such sterilization.

Subdivision (b). Former rule 39.8(c) stated that an appeal was deemed automatically taken from a judgment authorizing consent to sterilization upon *entry* of that judgment. But the statute provides instead that the appeal is automatically taken when the judgment is *rendered*. (Prob. Code, § 1962(b).) Revised rule 39.1(b) conforms to the statute.

Subdivision (g). Filling a gap, revised rule 39.1(g)(1) adds the district appellate project to the list of entities entitled to inspect confidential reports in the record. To allow the project to inspect any such materials would help the project (1) make its initial recommendation for appointment of counsel for the appellant, (2) assist that attorney in representing the client, and (3) ensure that the record is complete. The change is substantive.

Subdivision (h). Former rule 39.8(g) provided for certain duties of trial counsel during the period of record preparation. Revised rule 39.1(h) largely deletes these provisions because the topic is now covered by rule 32. This is a substantive change.

Rule 39.2. Appeal from order granting relief by writ of habeas corpus

(a) Application

Except as otherwise provided in this rule, rules 30–33.3 govern appeals under Penal Code section 1506 or 1507 from orders granting all or part of the relief sought in a petition for writ of habeas corpus.

(b) Contents of record

In an appeal under this rule, the record must contain:

(1) the petition, the return, and the traverse;

(2) the order to show cause;

(3) all court minutes;

(4) all documents and exhibits submitted to the court;

(5) the reporter's transcript of any oral proceedings;

(6) any written opinion of the court;

(7) the order appealed from; and

(8) the notice of appeal.

Rule 39.2 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 39.2 is former rule 50.

Subdivision (b). Paragraphs (2), (3), and (6) of revised rule 39.2(b) fill gaps; they are derived from revised rule 31(b)(3) and (7).

PART X. General Appellate Procedures

Rule 40. Definitions

Unless the context or subject matter requires otherwise, the following definitions apply to Title 1 of these rules.

(a) Appellant, respondent, and party

(1) "Appellant" means the appealing party; "respondent" means the adverse party.

(2) "Party" includes any attorney of record for that party.

(b) Gender, tense, and number

Each gender (masculine, feminine, or neuter) includes the others; each tense (past, present, or future) includes the others; each number (singular or plural) includes the other.

(c) Judgment

"Judgment" includes any judgment or order that may be appealed.

(d) Must, may, and may not; should; will

(1) "Must" is mandatory; "may" is permissive; "may not" means "is not permitted to."

(2) "Should" expresses a preference or a nonbinding recommendation.

(3) "Will" expresses a future contingency or predicts action by a court or a judicial officer.

(e) Superior and reviewing courts

(1) "Superior court" means the court from which an appeal is taken.

(2) "Reviewing court" means the Supreme Court or the Court of Appeal to which an appeal is taken, in which an original proceeding is begun, or to which an appeal or original proceeding is transferred.

Rule 40 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Former rule 40(f), (i), and (k) and the second sentence of former rule 40(e) have been moved to new rule 40.1 on service and filing.

Former rule 40(j) defined "register" and "register of actions" to mean the permanent record of cases maintained by electronic, magnetic, microphotographic, or similar means. The topic is covered more fully in rule 70.

Former rule 40(*l*) has been moved to new rule 40.2 on recycled paper.

Former rule 40(h) has been deleted as unnecessary.

Subdivision (d). Former rule 40(d) defined the word "shall" as mandatory; revised rule 40(d)(1) instead defines the word "must" as mandatory. Effective January 1, 2001, the latter usage was adopted by both the Judicial Council and its Rules and Projects Committee for all new and all amended California Rules of Court. (See Judicial Council of Cal., mins. (Oct. 27, 2000) p. 30; Judicial Council of Cal., Rules and Projects Com., *Policies and Guidelines for Rules, Forms, and Standards* (Dec. 17, 2001) p. 3.)

Rule 40.1. Service and filing

(a) Service

(1) Before filing any document in a court, a party must serve, by any method permitted by the Code of Civil Procedure, one copy of the document on the attorney for each party separately represented, on each unrepresented party, and on any other person or entity when required by statute or rule.

(2) The party must attach a proof of service to the document presented for filing. The proof must name each party represented by each attorney served.

(b) Filing

(1) Except as provided in rule 46, a document is deemed filed on the date the clerk receives it.

(2) Except as provided in (3), a filing is not timely unless the clerk receives the document before the time to file it expires.

(3) A brief, a petition for rehearing, an answer to a petition for rehearing, a petition for review, an answer to a petition for review, or a reply to an answer to a petition for review is timely if the time to file it has not expired on the date of:

(A) its mailing by priority or express mail as shown on the postmark or the postal receipt, or

(B) its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(4) The provisions of (3) do not apply to original proceedings.

Rule 40.1 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 40.1 restates provisions of former rule 40(e), (f), (i), and (k) on the subject of serving and filing documents in the superior courts and reviewing courts.

Subdivision (a). Former rule 40(f) required service "in a manner permitted by law"; new rule 40.1(a)(1) requires, more specifically, service "by any method permitted by the Code of Civil Procedure." The reference is to the several permissible methods of service provided in Code of Civil Procedure sections 1010–1020.

Rule 40.2. Recycled paper

When these rules require the use of recycled paper, the attorney, party, or other person serving or filing a document certifies, by that act, that the document was produced on recycled paper as defined by Public Resources Code section 42202.

Rule 40.2 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 40.2 restates former rule 40(*l*).

Rule 40.5. Notice of change of address or telephone number

(a) Serving and filing notice

(1) An attorney or unrepresented party whose address or telephone number changes while a case is pending in a reviewing court must promptly serve and file in that court a written notice of the change.

(2) The notice must specify the title and number of the case or cases to which it applies. If an attorney gives the notice, the notice must include the attorney's California State Bar number.

(b) Matters affected by notice

Unless the person giving the notice advises the reviewing court clerk otherwise in writing, the clerk may use the new address or telephone number in all pending and concluded cases.

(c) Appearance not conforming to address of record; multiple offices

(1) The clerk must enter a proposed appearance in a new matter even if it shows an attorney's address different from the address of record; but the appearance is subject to being struck if, after inquiry by the court, the attorney does not promptly confirm the address or serve and file a change of address.

(2) Attorneys with two or more offices may have a corresponding number of addresses of record, but only one address may be associated with a given case.

Rule 40.5 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Former rule 40.5(a) required that a notice of change of address or telephone number specify the number of the case to which it applied. Filling a gap, revised rule 40.5(a) requires that the notice also specify the case title.

Subdivision (b). Former rule 40.5(b) was limited on its face to notices filed by attorneys. Filling a gap, revised rule 40.5(b) includes notices filed by unrepresented parties.

Rule 41. Motions in the reviewing court

(a) Motion and opposition

(1) Except as these rules provide otherwise, a party wanting to make a motion in a reviewing court must serve and file a written motion stating the grounds and the relief requested and identifying any documents on which the motion is based.

(2) A motion must be accompanied by points and authorities and, if it is based on matters outside the record, by declarations or other supporting evidence.

(3) Any opposition must be served and filed within 15 days after the motion is filed.

(b) Disposition

(1) The court may rule on a motion at any time after an opposition or other response is filed or the time to oppose has expired.

(2) On a party's request or its own motion, the court may place a motion on calendar for a hearing. The clerk must promptly send each party a notice of the date and time of the hearing.

(c) Failure to oppose motion

A failure to oppose a motion may be deemed a consent to the granting of the motion.

Rule 41 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Former rule 41(a) measured the time to file an opposition to a motion from the date the motion was *served;* revised rule 41(a)(3) instead measures that time from the date the motion is *filed*. In each case the revised rule allows five additional days for mailing. The principal reason for this substantive change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule is thus made consistent with the rules providing that

the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

Subdivision (b). Former rule 41(b) allowed a court to rule on a motion at any time after opposition was filed or the time to file an opposition had expired. In practice, however, a party often does not intend to oppose the motion and so notifies the court. Recognizing this practice, revised rule 41(b)(1) provides that the court may rule when an opposition "or other response," e.g., a statement of intent not to oppose, is filed.

Former rule 41(b) declared that a motion would be deemed made "on all the grounds stated therein." Revised rule 41 deletes this provision as superfluous.

Subdivision (c). Former rule 41(c) separately stated the consequences of (1) failure "to appear and oppose [a motion to dismiss an appeal] after notification by the clerk of a hearing thereon" and (2) failure to oppose any other motion. Because the consequence was the same in either case—implied consent to the granting of the motion—revised rule 41(c) deletes the distinction and provides simply that a "failure to oppose a motion" may be deemed a consent to the granting of the motion. The change is not substantive, and is not intended to indicate a position on the question whether there is an implied right to a hearing to oppose a motion to dismiss an appeal.

Rule 42. Motions before the record is filed

(a) Motion to dismiss appeal

A motion to dismiss an appeal before the record is filed in the reviewing court must be accompanied by a certificate of the superior court clerk, a declaration, or both, stating:

(1) the nature of the action and the relief sought by the complaint and any cross-complaint or complaint in intervention;

(2) the names, addresses, and telephone numbers of all attorneys of record—stating whom each represents—and unrepresented parties;

(3) a description of the judgment or order appealed from, its entry date, and the service date of any written notice of its entry;

(4) the factual basis of any extension of the time to appeal under rule 3;

(5) the filing dates of all notices of appeal and the courts in which they were filed;

(6) the filing date of any document necessary to procure the record on appeal; and

(7) the status of the record preparation process, including any order extending time to prepare the record.

(b) Other motions

Any other motion filed before the record is filed in the reviewing court must be accompanied by a declaration or other evidence necessary to advise the court of the facts relevant to the relief requested.

Rule 42 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Filling gaps, revised rule 42(a)(2) requires the certificate or declaration to state the addresses and telephone numbers of all attorneys of record and all unrepresented parties, and the name of the party represented by each attorney.

Former rule 42(a)(4)–(5) required the certificate or declaration to state the filing date of any notice of intention to move for a new trial, the date and content of any ruling on that motion, and the service date of notice of that ruling. But these facts were relevant only insofar as they reflected one ground to extend the time to appeal under rule 3. The provision was underinclusive, because rule 3 recognizes additional grounds to extend the time to appeal. In a substantive change, revised rule 42(a)(4) therefore requires instead that the certificate or declaration state the factual basis of "any extension of the time to appeal under rule 3."

Former rule 40(a)(7) specified several documents whose filing dates the certificate or declaration was required to state. But these documents were relevant only insofar as they affected the process of procuring the record on appeal. The provision was underinclusive, because other documents may also be relevant to that process. In a substantive change, revised rule 42(a)(6) requires instead that the certificate or declaration state the filing date of "any document necessary to procure the record on appeal."

Former rule 42(a)(8) required the certificate or declaration to state the date of either "certification" of the record or "the facts relating to failure to certify." But the rules on appeals in civil and noncapital criminal cases contain no procedure for certifying the *record*; and no party may make a motion to *dismiss* an appeal in death penalty appeals, which are taken automatically (rule 34(a)). Former rule 42(a)(8) also required the certificate or declaration to state the fact that no proceeding for record preparation was pending in superior court or that the time to institute such a proceeding had expired. Revised rule 42(a)(7) focuses the provision on its purpose by requiring the certificate or declaration to state "the status of the record preparation process," including any order extending time to prepare the record.

Rule 43. Applications in the reviewing court

(a) Service and filing

Except as these rules provide otherwise, parties must serve and file all applications, including applications to extend the time to file records, briefs, or other documents,

and applications to shorten time. For good cause, the Chief Justice or presiding justice may excuse advance service.

(b) Contents

The application must state facts showing good cause—or exceptional good cause, when required by these rules—for granting the application and must identify any previous application filed by any party.

(c) Envelopes

An application to a Court of Appeal must be accompanied by addressed, postage-prepaid envelopes for the clerk's use in mailing copies of the order on the application to all parties.

(d) Disposition

Unless the court determines otherwise, the Chief Justice or presiding justice may rule on the application.

Rule 43 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 43 addresses applications generally. Revised rules 45 and 45.5 address applications to extend or shorten time.

Subdivision (a). Former rule 43 provided that the Chief Justice or presiding justice "may require an additional showing to be made" to support an application to the reviewing court. This provision in effect duplicated the rule's subsequent provision requiring the application to state facts showing good cause for granting the application. Revised rule 43(a) deletes the provision for an "additional showing" but subdivision (b) retains the requirement of a showing of good cause. The change is not substantive.

Subdivision (c). Revised rule 43(c) limits the applicant's duty to provide addressed, postage-prepaid envelopes to filings in the Court of Appeal. The Supreme Court does not use such envelopes.

Rule 44. Form, number, and cover of documents filed in the reviewing court

(a) Form

Except as these rules provide otherwise, documents filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 14(b).

(b) Number of copies

The following number of copies must be filed of every brief, petition, motion, or other document, except the record, filed in a reviewing court:

(1) If filed in the Supreme Court:

(A) except as provided in (D), an original and 13 copies of a petition for review, an answer, a reply, a brief on the merits, an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, or an answer to a petition for rehearing;

(B) an original and 10 copies of a petition for a writ within the court's original jurisdiction, an opposition or other response to the petition, or a reply;

(C) unless the court orders otherwise, an original and 2 copies of any supporting document accompanying a petition for writ of habeas corpus, an opposition or other response to the petition, or a reply;

(D) an original and 8 copies of a petition for review to exhaust state remedies under rule 33.3, an answer, or a reply, or an amicus curiae letter under rule 28(g);

(E) an original and 8 copies of a motion or an opposition or other response to a motion; and

(F) an original and 1 copy of an application, including an application to extend time, or any other document.

(2) If filed in a Court of Appeal:

(A) an original and 4 copies of a brief, an amicus curiae brief, or an answer to an amicus curiae brief, and, in civil appeals, proof of delivery of 4 copies to the Supreme Court;

(B) an original and 4 copies of a petition, an answer, opposition or other response to a petition, or a reply;

(C) an original and 3 copies of a motion or an opposition or other response to a motion; and

(D) an original and 1 copy of an application, including an application to extend time, or any other document.

(3) Unless the court orders otherwise by local rule or in the specific case, only one set of any separately bound supporting documents accompanying a document filed under (2)(B) or (C) need be filed.

(c) Cover color

(1) As far as practicable, the covers of briefs and petitions must be in the following colors:

Appellant's opening brief or appendix.……green
Respondent's brief or appendix..……yellow
Appellant's reply brief or appendix.…….……tan
Joint appendix.……..……white
Amicus curiae brief.……...……gray
Answer to amicus curiae brief.……..……..……blue
Petition for rehearing.…….……orange
Answer to petition for rehearing.……blue
Petition for original writ.……..……red
Answer (or opposition) to petition for original writ.……...…..…red
Reply to answer (or opposition) to petition for original writ...…red
Petition for review..…..…..…..…..…..…..…..…..…..…..…..…..…..white
Answer to petition for review..…..…..…..…..……..…blue
Reply to answer to petition for review.……..…white
Opening brief on the merits.…….white
Answer brief on the merits.…….blue
Reply brief on the merits.……..white

(2) In appeals under rule 16, the cover of a combined respondent's brief and appellant's opening brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.

(3) A brief or petition not conforming to (1) or (2) must be accepted for filing, but in case of repeated violations by an attorney or party the court may proceed as provided in rule 14(e).

(d) Cover information

The cover—or first page if there is no cover—of every document filed by an attorney in a reviewing court must comply with rule 14(b)(10)(D).

Rule 44 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Former rule 44(a) required that all copies of documents be clear, legible, and on recycled paper, and encouraged the use of recycled paper for brief covers. Revised rule 44(a) deletes these requirements because they duplicate provisions of rule 14(b), incorporated by reference into the revised rule.

Subdivision (b). Revised rule 44(b)(1)(A) combines former rule 44(b)(1)(A) and (B). Filling gaps, revised rule 44(b)(1)(A) specifies that an amicus curiae brief, an answer to an amicus curiae brief, a petition for rehearing, and an answer to such a petition in the Supreme Court must be filed in an original and 13 copies.

Filling a gap, revised rule 44(b)(1)(B) specifies that a reply to an opposition to a writ petition in the Supreme Court must be filed in an original and 10 copies.

To conform to Supreme Court practice, revised rule 44(b)(1)(C) specifies that only an original and 2 copies of any supporting document or exhibit accompanying a petition for writ of habeas corpus, an opposition, or a reply must be filed unless the court orders otherwise.

Filling a gap, revised rule 44(b)(1)(D) specifies that an amicus curiae letter under rule 28(g) must be filed in an original and 8 copies.

Revised rule 44(b)(1)(F) and (2)(D) clarifies that only an original and one copy of "an application, including an application for extension of time," must be filed in either the Supreme Court or the Court of Appeal.

Former rule 44(b)(2)(ii) required a party filing a brief in the Court of Appeal in a civil case to attach proof of service of 5 copies on the Supreme Court. Revised rule 44(b)(2)(A) reduces that number from 5 to 4. If the Court of Appeal has ordered such briefs sealed, the party must comply with rule 15(c)(2) as amended effective January 1, 2005.

Filling a gap, revised rule 44(b)(2)(B) specifies that a reply to an opposition to a petition in the Court of Appeal must be filed in an original and 4 copies.

Revised rule 44(b)(3) is new. Like former rule 44(b)(2)(B) and (C), revised rule 44(b)(2)(B) and (C) requires that certain documents be filed in the Court of Appeal in an original and multiple copies. But the party may—and under certain rules, must—accompany such a filing with supporting documents, and in some cases those documents may be voluminous. To relieve the party of the burden of preparing—and the court of the burden of processing and storing—multiple copies of voluminous supporting documents, it is the practice of several Courts of Appeal to require only one set of any separately bound documents that a party files in support of a filing under rule 44(b)(2)(B) or (C). Revised rule 44(b)(3) reflects that practice, but recognizes that the courts may wish to order otherwise by local rule or in specific cases.

Subdivision (c). Filling gaps, revised rule 44(c) specifies the colors of the following additional documents: appellant's appendix (rule 5.1), respondent's appendix, joint appendix, answer to amicus curiae brief, and reply to answer (or opposition) to petition for original writ.

Filling a gap, revised rule 44(c)(2) specifies that in an appeal in which a party is both an appellant and a respondent, the cover of a combined respondent's brief and appellant's opening brief must be yellow, and the cover of a combined reply brief and respondent's brief must be tan.

Rule 45. Extending and shortening time

(a) Computing time

The Code of Civil Procedure governs computing and extending the time to do any act required or permitted under these rules.

(b) Extending time

For good cause—or exceptional good cause, when required by these rules—and except as these rules provide otherwise, the Chief Justice or presiding justice may extend the time to do any act required or permitted under these rules.

(c) Shortening time

For good cause and except as these rules provide otherwise, the Chief Justice or presiding justice may shorten the time to do any act required or permitted under these rules.

(d) Application for extension

(1) An application to extend time must include a declaration stating facts, not mere conclusions, and must be served on all parties. For good cause, the Chief Justice or presiding justice may excuse advance service.

(2) The application must state:

(A) the due date of the document to be filed;

(B) the length of the extension requested;

(C) whether any earlier extensions have been granted and, if so, their lengths and whether granted by stipulation or by the court; and

(D) good cause—or exceptional good cause, when required by these rules—for granting the extension, consistent with the factors in rule 45.5(b).

(e) Relief from default

For good cause, a reviewing court may relieve a party from default for any failure to comply with these rules except the failure to file a timely notice of appeal or a timely statement of reasonable grounds in support of a certificate of probable cause.

(f) No extension by superior court

Except as these rules provide otherwise, a superior court may not extend the time to do any act to prepare the appellate record.

(g) Notice to party

(1) In a civil case, counsel must deliver to the client a copy of any stipulation or application to extend time that counsel files. Counsel must attach evidence of such delivery to the stipulation or application, or certify in the stipulation or application that the copy has been delivered.

(2) In a class action, the copy required under (1) need be delivered to only one represented party.

(3) The evidence or certification of delivery under (1) need not include the address of the party notified.

Rule 45 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (d). Revised rule 45(d) is former rule 45.5(b).

Subdivision (e). Filling a gap, revised rule 45(e) specifies that in appeals after a plea of guilty or nolo contendere, the reviewing court may not relieve any party from default for failure to file the timely statement of reasonable grounds in support of a certificate of probable cause required by rule 30(b)(1). (See *In re Chavez* (2003) 30 Cal.4th 643, 652–653.)

Former subdivision (c). Former rule 45(c) provided that the time to file a notice of appeal could not be extended. The provision has been moved to rules 2(b) and 30.1(a).

Former rule 45(c) provided that the time to file a petition in the Supreme Court to review a Court of Appeal decision could not be extended. The provision has been moved to rule 28(e)(2).

Former rule 45(c) provided that the time to grant or deny a petition for rehearing in the Court of Appeal could not be extended. The provision has been moved to rule 25(c).

Former rule 45(c) provided that the time to grant or deny a petition for Supreme Court review of a Court of Appeal decision could be extended only as provided in former rule 28(a). The provision is

deleted as unnecessary; revised rule 28.2(b) now states the only manner in which the Supreme Court may extend that time.

Former rule 45(c) provided that the time to grant or deny a petition for rehearing in the Supreme Court could be extended only as provided in former rule 24(a). The provision is deleted as unnecessary; revised rule 29.5(c) now states the only manner in which the Supreme Court may extend that time.

Former rule 45(c) included provisions relating to the time to do certain acts under former rules 62 and 63(d). Those rules were repealed effective January 1, 2003.

Former rule 45(c) included a provision authorizing the Chief Justice or presiding justice to relieve a party from default for failure to file a timely petition for review or rehearing. The provision has been moved to rule 25(b)(4) in the case of the Court of Appeal and to rules 28(e)(2) and 29.5(b) in the case of the Supreme Court.

Rule 45.1. Appellate emergencies

(a) Emergency extensions of time

If made necessary by the occurrence or danger of an earthquake, fire, or other public calamity, or by the destruction of or danger to a building housing a reviewing court, the Chair of the Judicial Council, notwithstanding any other rule in this title, may:

(1) extend by no more than 14 additional days the time to do any act required or permitted under these rules, or

(2) authorize specified courts to extend by no more than 30 additional days the time to do any act required or permitted under these rules.

(b) Applicability of order

(1) An order under (a) must specify whether it applies throughout the state, only to specified courts, or only to courts or attorneys in specified geographic areas, or applies in some other manner.

(2) An order of the Chair of the Judicial Council under (a)(2) must specify the length of the authorized extension.

(c) Additional extensions

If made necessary by the nature or extent of the public calamity, the Chair of the Judicial Council may extend or renew an order issued under (a) for an additional period of:

(1) no more than 14 days for an order under (a)(1) or

(2) no more than 30 days for an order under (a)(2).

Rule 45.1 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 45.1 restates in simpler terms the procedures set forth in former rule 45.1 for granting emergency extensions of time in cases of public calamity, but intends no substantive change.

Subdivision (a). Former rule 45.1(2) authorized the Chair of the Judicial Council to order that no more than 14 days "be excluded from any computation of the time" to do any act required or permitted under the rules. Revised rule 45.1 deletes this provision because it in effect duplicates subdivision (a)(1) of the revised rule, which authorizes the Chair to *extend* by the same 14 days the time to do any act required or permitted under the rules. No substantive change is intended.

Rule 45.5. Policies and factors governing extensions of time

(a) Policies

(1) The time limits prescribed by these rules should generally be met to ensure expeditious conduct of appellate business and public confidence in the efficient administration of appellate justice.

(2) The effective assistance of counsel to which a party is entitled includes adequate time for counsel to prepare briefs or other documents that fully advance the party's interests. Adequate time also allows the preparation of accurate, clear, concise, and complete submissions that assist the courts.

(3) For a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within the time specified in the rules of court. To balance the competing policies stated in (1) and (2), applications to extend time in the reviewing courts must demonstrate good cause—or exceptional good cause, when required by these rules—under (b). If good cause is shown, time must be extended.

(b) Factors considered

In determining good cause—or exceptional good cause, when required by these rules—the court must consider the following factors when applicable:

(1) The degree of prejudice, if any, to any party from a grant or denial of the extension. A party claiming prejudice must support the claim in detail.

(2) In a civil case, the positions of the client and any opponent with regard to the extension.

(3) The length of the record, including the number of relevant trial exhibits. A party relying on this factor must specify the length of the record. In a civil case, a record containing one volume of clerk's transcript or appendix and two volumes of reporter's transcript is considered an average-length record.

(4) The number and complexity of the issues raised. A party relying on this factor must specify the issues.

(5) Whether there are settlement negotiations and, if so, how far they have progressed and when they might be completed.

(6) Whether the case is entitled to priority.

(7) Whether counsel responsible for preparing the document is new to the case.

(8) Whether other counsel or the client needs additional time to review the document.

(9) Whether counsel responsible for preparing the document has other time-limited commitments that prevent timely filing of the document. Mere conclusory statements that more time is needed because of other pressing business will not suffice. Good cause requires a specific showing of other obligations of counsel that:

(A) have deadlines that as a practical matter preclude filing the document by the due date without impairing its quality, or

(B) arise from cases entitled to priority.

(10) Illness of counsel, a personal emergency, or a planned vacation that counsel did not reasonably expect to conflict with the due date and cannot reasonably rearrange.

(11) Any other factor that constitutes good cause in the context of the case.

Rule 45.5 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Revised rule 45.5(a) restates in simpler terms the policies governing extensions of time set forth in former rule 45.5(a), but intends no substantive change.

Subdivision (c). Former rule 45.5(c)(3) stated that the "average-length record" on appeal was one volume of clerk's transcript and two volumes of reporter's transcript. Because the average-length record in appeals from judgments of death is much longer, revised rule 45.5(c)(3) limits the statement to civil cases. The revised rule also adds a reference to appendixes (rule 5.1).

Former subdivision (b). Former rule 45.5(b) is now revised rule 45(d).

Rule 46. Documents violating rules not to be filed

Except as these rules provide otherwise, the reviewing court clerk must not file any record, brief, or other document that does not conform to these rules.

Rule 46 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 46 adds a proviso noting there are exceptions to this rule (e.g., rule 17(a) and revised rule 56(d)(2)).

Rule 46.5 Sanctions to compel compliance

The failure of a court reporter or clerk to perform any duty imposed by statute or these rules that delays the filing of the appellate record is an unlawful interference with the reviewing court's proceedings. It may be treated as an interference in addition to or instead of any other sanction that may be imposed by law for the same breach of duty. This rule does not limit the reviewing court's power to define and remedy any other interference with its proceedings.

Rule 46.5 repealed and adopted effective January 1, 2005.

Rule 47. Courts of Appeal with more than one division

Appeals and original proceedings filed in a Court of Appeal with more than one division, or transferred to such a court without designation of a division, may be

assigned to divisions in a way that will equalize the distribution of business among them. The Court of Appeal clerk must keep records showing the divisions in which cases and proceedings are pending.

Rule 47 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Former rule 47(a) required that assignments of appeals in a multidivision Court of Appeal be made "by the presiding justices successively for periods of one year unless a majority of the judges of the court in the district shall otherwise determine"; former rule 47(b) required that assignment of original proceedings and unassigned motions in such a court be made "as a majority of the judges of the court in the district shall determine." In practice, however, the Courts of Appeal with more than one division have developed different ways to make such assignments according to their needs. Recognizing this fact, revised rule 47 simply authorizes the courts to make such assignments "in a way that will equalize the distribution of business" among the several divisions. The change is not substantive.

Rule 48. Substituting parties; substituting or withdrawing attorneys

(a) Substituting parties

Substitution of parties in an appeal or original proceeding must be made by serving and filing a motion in the reviewing court. The clerk of that court must notify the superior court of any ruling on the motion.

(b) Substituting attorneys

A party may substitute attorneys by serving and filing in the reviewing court a substitution signed by the party represented and the new attorney. In all appeals and in original proceedings related to a superior court proceeding, the party must also serve the superior court.

(c) Withdrawing attorney

(1) An attorney may request withdrawal by filing a motion to withdraw. Unless the court orders otherwise, the motion need be served only on the party represented and the attorneys directly affected.

(2) The proof of service need not include the address of the party represented. But if the court grants the motion, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

(3) In all appeals and in original proceedings related to a superior court proceeding, the reviewing court clerk must notify the superior court of any ruling on the motion.

(4) If the motion is filed in any proceeding pending in the Supreme Court after grant of review, the Supreme Court clerk must also notify the Court of Appeal of any ruling on the motion.

Rule 48 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Revised rule 48(a) simplifies and restates former rule 48(a) to conform to good practice. No substantive change is intended.

Subdivision (b). Former rule 48(b) required a party substituting attorneys to serve and file either a stipulation or a motion in the reviewing court. In practice, however, a party does so by serving and filing a *substitution*. Revised rule 48(b) conforms to that practice. The change is not substantive.

Former rule 48(b) required the substitution to be signed by the party, the former attorney, and the new attorney. In practice, however, the former attorney's consent is not required because that attorney does not have authority to prevent the substitution. In a substantive change intended to conform to practice and to a reasonable reading of the governing statute (Code Civ. Proc., § 284, subd. 1), revised rule 48(b) requires only the party represented and the new attorney to sign the substitution.

Former rule 48(b) required the new attorney, following a substitution, to "give notice thereof to all parties." Because such a notice would duplicate the requirement of revised rule 48(b) that the substitution be *served*, it is deleted.

Subdivision (c). Former rule 48(b) required an attorney wishing to withdraw to serve and file either a stipulation or a motion in the reviewing court. In practice, however, an attorney withdraws by filing a motion with proof of service on the party represented and the attorneys directly affected. Revised rule 48(c)(1) conforms to that practice, but the change is not substantive. To protect privacy, revised rule 48(c)(2) provides that the proof of service of the motion need not include the address of the party represented; but if the motion is granted, the withdrawing attorney must promptly provide the court and the opposing party with the party's current or last known address and telephone number.

Filling a gap, revised rule 48(c)(4) provides that if a motion to withdraw is filed in any proceeding—whether an appeal or an original proceeding in the Court of Appeal—pending in the Supreme Court after grant of review, the Supreme Court clerk must also notify the Court of Appeal of any ruling on the motion.

Rule 49. Writ of supersedeas

(a) Petition

(1) A party seeking a stay of the enforcement of a judgment or order pending appeal may serve and file a petition for writ of supersedeas in the reviewing court.

(2) The petition must bear the same title as the appeal and, if known, the appeal's docket number.

(3) The petition must explain the necessity for the writ and include points and authorities.

(4) If the record has not been filed in the reviewing court, the petition must include:

(A) the judgment or order, showing its date of entry;

(B) the notice of appeal, showing its date of filing; and

(C) a statement of the case, including a summary of the material facts.

(5) The petition must be verified.

(b) Opposition

(1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.

(2) An opposition must state any material facts not included in the petition and include points and authorities.

(3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(c) Temporary stay

(1) The petition may include a request for a temporary stay under rule 49.5 pending the ruling on the petition.

(2) Except when the custody of a minor is involved, a separately filed request for a temporary stay need not be served on the respondent.

(d) Issuing the writ

(1) The court may issue the writ on any conditions it deems just.

(2) The court must hold a hearing before it may issue a writ staying an order that awards or changes the custody of a minor.

(3) The court must notify the superior court, under rule 56(j), of any writ or temporary stay that it issues.

Rule 49 repealed and adopted effective January 1, 2005.

Rule 49.5. Request for writ of supersedeas or temporary stay

(a) Information on cover

If a petition for original writ, petition for review, or any other document requests a writ of supersedeas or temporary stay from a reviewing court, the cover of the document must:

(1) prominently display the notice "STAY REQUESTED" and

(2) identify the nature and date of the proceeding or act sought to be stayed.

(b) Additional information

The following information must appear either on the cover or at the beginning of the text:

(1) the trial court and department involved, and

(2) the name and telephone number of the trial judge whose order the request seeks to stay.

(c) Sanction

If the document does not comply with (a) and (b), the reviewing court may decline to consider the request for writ of supersedeas or temporary stay.

Rule 49.5 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivisions (a) and (b). Revised rule 49.5(a)(2) and (b) are substantive changes designed to assist the reviewing courts in processing requests for writ of supersedeas or temporary stay.

Rule 51. Substitute trial judge

(a) Who may act

If these rules require an act to be done by the judge who tried the case and that judge is unavailable or unable to act at the required time, the act may be done by another judge of the same court in counties with more than one judge.

(b) Who must designate

(1) The presiding judge—or, if none, the senior judge—must designate the judge to act under (a).

(2) If no judge of the superior court in the county is available, the Chair of the Judicial Council must designate a judge to do the act.

Rule 51 repealed and adopted effective January 1, 2005.

Rule 52. Presumption from record

The reviewing court will presume that the record in an appeal includes all matters material to deciding the issues raised. If the appeal proceeds without a reporter's transcript, this presumption applies only if the claimed error appears on the face of the record.

Rule 52 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Rule 52 has been simplified and restated to reflect its intent as explained in the case law. (See, e.g., *Dumas v. Stark* (1961) 56 Cal.2d 673, 674.) No substantive change is intended.

Rule 53. Application and construction of rules

(a) Application

The rules in title 1 apply to:

(1) appeals from superior courts;

(2) original proceedings, motions, applications, and petitions in the Courts of Appeal and Supreme Court; and

(3) proceedings for transferring cases within the appellate jurisdiction of the superior court to the Court of Appeal for review, unless rules 61–69 provide otherwise.

(b) Construction

These rules must be liberally construed to ensure the just and speedy determination of the proceedings they govern.

(c) Amendments to statutes

In these rules a reference to a statute includes any subsequent amendments to the statute.

Rule 53 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (c). Revised rule 53(c) fills a gap. It is derived from Evidence Code section 6.

Rule 54. Amendments to rules

Only the Judicial Council may amend these rules. An amendment must be published in the advance pamphlets of the Official Reports and takes effect on the date ordered by the Judicial Council.

Rule 54 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Former rule 54 stated that an amendment to these rules took effect 60 days after its first publication unless the Judicial Council ordered otherwise. That practice is no longer followed; currently, the Judicial Council specifies the effective date of an amendment in the order of the Council adopting it. Revised rule 54 reflects this practice.

Former rule 54 provided for the *withdrawal* of a rule amendment by the Judicial Council before its effective date. Revised rule 54 deletes this provision as obsolete: the council neither uses nor needs the procedure. The council retains the authority to repeal or modify a pending amendment at any time. The change is not substantive.

CHAPTER 2. Rules on Original Proceedings in Reviewing Courts

Rule 56. Original proceedings

(a) Application

(1) This rule governs petitions to the reviewing court for writs of mandate, certiorari, or prohibition, or other writs within its original jurisdiction. In all respects not provided for in this rule, rule 14 applies.

(2) This rule does not apply to petitions for writs of habeas corpus, except as provided in rule 60, or to petitions for writs of review under rules 57–59.

(b) Petition

(1) If the petition could have been filed first in a lower court, it must explain why the reviewing court should issue the writ as an original matter.

(2) If the petition names as respondent a judge, court, board, or other officer acting in a public capacity, it must disclose the name of any real party in interest.

(3) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the notice "Related Appeal Pending" must appear on the cover of the petition and the first paragraph of the petition must state:

(A) the appeal's title, trial court docket number, and any reviewing court docket number, and

(B) if the petition is filed under Penal Code section 1238.5, the date the notice of appeal was filed.

(4) The petition must be verified.

(5) The petition must be accompanied by points and authorities, which need not repeat facts alleged in the petition.

(6) Rule 14(c) governs the length of the petition and points and authorities, but the tables, the certificate, the verification, and any supporting documents are excluded from the limits stated in rule 14(c)(1) and (2).

(7) If the petition requests a temporary stay, it must comply with rule 49.5 and explain the urgency.

(c) Contents of supporting documents

(1) A petition that seeks review of a trial court ruling must be accompanied by an adequate record, including copies of:

(A) the ruling from which the petition seeks relief;

(B) all documents and exhibits submitted to the trial court supporting and opposing the petitioner's position;

(C) any other documents or portions of documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling under review; and

(D) a reporter's transcript of the oral proceedings that resulted in the ruling under review.

(2) If a transcript under (1)(D) is unavailable, the record must include a declaration by counsel:

(A) explaining why the transcript is unavailable and fairly summarizing the proceedings, including counsel's arguments and any statement by the court supporting its ruling; or

(B) stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which must be a date prior to any action requested of the reviewing court other than issuance of a temporary stay supported by other parts of the record.

(3) A declaration under (2) may omit a full summary of the proceedings if part of the relief sought is an order to prepare a transcript for use by an indigent criminal defendant in support of the petition and if the declaration demonstrates the petitioner's need for and entitlement to the transcript.

(4) In exigent circumstances, the petition may be filed without the documents required by (1)(A)–(C) if counsel files a declaration that explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.

(5) If the petitioner does not submit the required record or explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny a stay request, the petition, or both.

(d) Form of supporting documents

(1) Documents submitted under (c) must comply with the following requirements:

(A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.

(B) They must be index-tabbed by number or letter.

(C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.

(2) The clerk must file any supporting documents not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the documents are not brought into compliance within a stated reasonable time of not less than five days.

(3) Rule 44(b)(3) governs the number of copies of supporting documents to be filed.

(e) Sealed records

Rule 12.5 applies if a party seeks to lodge or file a sealed record or to unseal a record.

(f) Service

(1) If the respondent is the superior court or a judge of that court, the petition and one set of supporting documents must be served on any named real party in interest but only the petition must be served on the respondent.

(2) If the respondent is not the superior court or a judge of that court, both the petition and one set of supporting documents must be served on the respondent and on any named real party in interest.

(3) The proof of service must give the telephone number of each attorney served and name each party represented by each attorney.

(4) The petition must be served on a public officer or agency when required by statute or rule 44.5.

(5) The clerk must file the petition even if its proof of service is defective, but if the petitioner fails to file a corrected proof of service within five days

after the clerk gives notice of the defect the court may strike the petition or impose a lesser sanction.

(6) The court may allow the petition to be filed without proof of service.

(g) Preliminary opposition

(1) Within 10 days after the petition is filed, the respondent or any real party in interest, separately or jointly, may serve and file a preliminary opposition.

(2) An opposition must contain points and authorities and a statement of any material fact not included in the petition.

(3) Within 10 days after an opposition is filed, the petitioner may serve and file a reply.

(4) Without requesting opposition or waiting for a reply, the court may grant or deny a request for temporary stay, deny the petition, issue an alternative writ or order to show cause, or notify the parties that it is considering issuing a peremptory writ in the first instance.

(h) Return or opposition; reply

(1) If the court issues an alternative writ or order to show cause, the respondent or any real party in interest, separately or jointly, may serve and file a return by demurrer, verified answer, or both. If the court notifies the parties that it is considering issuing a peremptory writ in the first instance, the respondent or any real party in interest may serve and file an opposition.

(2) Unless the court orders otherwise, the return or opposition must be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance.

(3) Unless the court orders otherwise, the petitioner may serve and file a reply within 15 days after the return or opposition is filed.

(4) If the return is by demurrer alone and the demurrer is not sustained, the court may issue the peremptory writ without granting leave to answer.

(i) Attorney General's amicus curiae brief

(1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.

(2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, within 14 days after the date it was due.

(3) The brief must provide the information required by rule 13(c)(2) and comply with rule 13(c)(4).

(4) Any party may serve and file an answer within 14 days after the brief is filed.

(j) Notice to trial court

(1) If a writ or order issues directed to any judge, court, board, or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.

(2) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone. The clerk of the respondent court must then notify the judge or officer most directly concerned.

(3) The clerk need not give telephonic notice of the summary denial of a writ, whether or not a stay previously issued.

(k) Responsive pleading under Code of Civil Procedure section 418.10

If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil Procedure section 418.10(c) and the Supreme Court denies review of the Court of Appeal's decision, the time to file a responsive pleading in the trial court is extended until 10 days after the Supreme Court files its order denying review.

(*l*) Costs

(1) Except in a proceeding in which a party is entitled to court-appointed counsel, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by written opinion after issuing an alternative writ, an order to show cause, or a peremptory writ in the first instance.

(2) In the interests of justice, the court may award or deny costs as it deems proper.

(3) The opinion or order resolving the proceeding must specify the award or denial of costs.

(4) Rule 27(b)–(d) governs the procedure for recovering costs under this rule.

Rule 56 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 56 combines the provisions of former rules 56 and 56.4.

Subdivision (b). Because of the importance of the point, revised rule 56(b)(6) explicitly states that the provisions of rule 14(c)—and hence the word-count limits imposed by that rule—apply to a petition for original writ.

Subdivision (d). Revised rule 56(d)(3) fills a gap by specifying that a petitioner must file only one set of supporting documents in the reviewing court. The revised rule, however, recognizes the courts' practice of requiring additional sets of such documents when needed.

Subdivision (f). Revised rule 56 (f)(1) makes it clear that the required supporting documents must not be served on the respondent if the latter, as is commonly the case, is the superior court or a judge of that court.

Subdivision (g). Consistently with practice, revised rule 56 draws a distinction between a "preliminary opposition," which the respondent or a real party in interest may file before the court takes any action on the petition (subd. (g)(1)), and a more formal "opposition," which the respondent or a real party in interest may file if the court notifies the parties that it is considering issuing a peremptory writ in the first instance (subd. (h)(1)).

Former rule 56(b) allowed the respondent or any real party in interest to file a preliminary opposition "within five days after service *and* filing" of the petition. Because the date of service and the date of filing do not necessarily coincide, the provision was unclear. In a substantive change, revised rule 56(g)(1) instead allows the respondent or any real party in interest to file a preliminary opposition within 10 days after the petition is *filed*, the 5 additional days being allowed for mailing. The reviewing court retains the power to act in any case without obtaining an opposition (revised rule 56(g)(4)).

Revised rule 56(g)(3) is new. Former rule 56 did not expressly authorize petitioners to reply to preliminary oppositions, but the reviewing courts often permitted such replies. In a substantive change intended to formalize this practice, revised rule 56(g)(3) provides that a petitioner may serve and file a

reply within 10 days after an opposition is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may act on the petition without waiting for a reply.

Filling a gap, revised rule 56(g)(4) recognizes that the reviewing court may also "grant or deny a request for temporary stay" without requesting opposition or waiting for a reply.

The several references in revised rule 56 to the power of the court to issue a peremptory writ in the first instance, after notifying the parties that it is considering doing so (subds. (g)–(h)), implement the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171. The change is not substantive.

Subdivision (h). Former rule 56(f) required the return to be filed "at least five days before the date set for hearing." Because "hearing" in this context meant oral argument before the reviewing court, the provision caused administrative difficulties: for example, the five-day limit allowed little or no time for the petitioner to reply to the return or for the court to prepare for oral argument. In a substantive change intended to alleviate those difficulties, revised rule 56(h)(2) requires instead that the return or opposition be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Revised subdivision 56(h)(3) is new. In a substantive change, it formalizes the common practice of permitting petitioners to file replies to returns and specifies that such a reply must be served and filed within 15 days after the return is filed. To permit prompt action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.

Subdivision (*l*). Revised rule 56(*l*) is former rule 56.4.

Rule 57. Review of Workers' Compensation Appeals Board cases

(a) Petition

(1) A petition to review an order, award, or decision of the Workers' Compensation Appeals Board must include:

(A) the order, award, or decision to be reviewed, and

(B) the workers' compensation judge's minutes of hearing and summary of evidence, findings and decision, and report and recommendation on the petition for reconsideration.

(2) If the petition claims that the board's ruling is not supported by substantial evidence, it must fairly state and attach copies of all the relevant material evidence.

(3) The petition must be accompanied by proof of service of two copies of the petition on the Secretary of the Workers' Compensation Appeals

Board in San Francisco and one copy on each party who appeared in the action and whose interest is adverse to the petitioner. Service on the board's local district office is not required.

(b) Answer and reply

(1) Within 25 days after the petition is filed, the board or any real party in interest may serve and file an answer and any relevant exhibits not included in the petition.

(2) Within 15 days after an answer is filed, the petitioner may serve and file a reply.

Rule 57 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). In a substantive change intended to assist the reviewing court in understanding the procedural history of the case and the stipulations and evidence introduced at the hearing, revised rule 57(a)(1)(B) requires the petition to include the minutes of hearing and summary of evidence prepared by the workers' compensation judge.

To assist the reviewing court in determining the merits, revised rule 57(a)(2) requires that a petition that raises any issue of the substantiality of the evidence must not only state, but must also attach copies of, all the material evidence relevant to that issue. The change is substantive.

To clarify on whom and where the petition must be served, revised rule 57(a)(3) specifies that it must be served on the Secretary of the Workers' Compensation Appeals Board in San Francisco. Neither the petition nor a courtesy copy should be served on the local district office of the board.

Subdivision (b). Former rule 57(b) measured the time to file an answer (or reply) from the date the petition (or answer) was *served;* revised rule 57(b) instead measures that time from the date the petition (or answer) is *filed*. In each case the revised rule allows five additional days for mailing. The principal reason for this substantive change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule is thus made consistent with the rules providing that the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

To clarify that a respondent may rely on exhibits filed with the petition without duplicating them in the answer, revised rule 57(b)(1) specifies that exhibits filed with an answer must be limited to exhibits "not included in the petition."

Rule 58. Review of Public Utilities Commission cases

(a) Petition

(1) A petition to review an order or decision of the Public Utilities Commission must be verified and must be served on the executive director and general counsel of the commission and any real parties in interest.

(2) A real party in interest is one who was a party of record to the proceeding and took a position adverse to the petitioner.

(b) Answer and reply

(1) Within 35 days after the petition is filed, the commission or any real party in interest may serve and file an answer.

(2) Within 25 days after an answer is filed, the petitioner may serve and file a reply.

Rule 58 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). To clarify on whom the petition must be served, revised rule 58(a)(1) specifies that it must be served on the executive director and general counsel of the Public Utilities Commission.

Subdivision (b). Former rule 58(b) measured the time to file an answer (or reply) from the date the petition (or answer) was *served;* revised rule 58(b) instead measures that time from the date the petition (or answer) is *filed*. In each case the revised rule allows five additional days for mailing. The principal reason for this substantive change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule is thus made consistent with the rules providing that the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

Rule 59. Review of Agricultural Labor Relations Board and Public Employment Relations Board cases

(a) Petition

(1) A petition to review an order or decision of the Agricultural Labor Relations Board or the Public Employment Relations Board must be filed

in the Court of Appeal and served on the executive secretary of the Agricultural Labor Relations Board or the general counsel of the Public Employment Relations Board in Sacramento and on any real parties in interest.

(2) A real party in interest is a party of record to the proceeding.

(3) The petition must be verified.

(b) Record

Within the time permitted by statute, the board must file the certified record of the proceedings and simultaneously file and serve on all parties an index to that record.

(c) Briefs

(1) The petitioner must serve and file its brief within 35 days after the index is filed.

(2) Within 35 days after the petitioner's brief is filed, the board must—and any real party in interest may—serve and file a respondent's brief.

(3) Within 25 days after the respondent's brief is filed, the petitioner may serve and file a reply brief.

Rule 59 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Former rule 59(a) provided that a petition to review an order or decision of the Public Employment Relations Board must be served on the "executive director" of that board. Because that position has been abolished, revised rule 59(a)(1) provides that service must be made on the board's general counsel.

Former rule 59(a) specified that the petition was not required to be verified if "the petitioner was exempted from verifying pleadings by Code of Civil Procedure section 446," and that the petition was required to be served "as provided in Code of Civil Procedure sections 1010–1015." Revised rule 59 deletes the quoted provisions as unnecessary; the cited statutes apply to *all* the rules of court. The change is not substantive.

Subdivision (b). Former rule 59(b) listed several statutes prescribing the times within which the Agricultural Labor Relations Board or the Public Employment Relations Board must file the certified record and serve and file an index to the record. The provision was misleading because the list was incomplete; revised rule 59(b) deletes it and provides simply that the two boards must act "[w]ithin the time permitted by statute . . . ." The change is not substantive.

Subdivision (c). Former rule 59(c)–(d) measured the time to file the petitioner's brief, a respondent's brief, or a reply brief from the date that the index, the petitioner's brief, or the respondent's brief was *served;* revised rule 59(c) instead measures those times from the date that the index, the petitioner's brief, or the respondent's brief is *filed*. In each case the revised rule allows five additional days for mailing. The principal reason for this substantive change is that the filing date of a document is more reliable than the date appearing on its proof of service. Using the filing date results in greater certainty for the reviewing court and makes it easier for the reviewing court clerk to verify the relevant date, both when the motion is filed and later when an opposition is presented for filing. The rule is thus made consistent with the rules providing that the filing date controls the time to prepare answers and replies to briefs and petitions (see, e.g, rules 15(a), 28(e), 29.1(a), 29.5(b), 33(c), and 36(c)).

Rule 60. Petition for writ of habeas corpus

(a) Required Judicial Council form

(1) A petition to a reviewing court for writ of habeas corpus—or other writ within its original jurisdiction—that seeks release from, or modification of the conditions of, custody of a person confined in a state or local penal institution, hospital, narcotics treatment facility, or other institution must be filed on Judicial Council form MC-275, *Petition for Writ of Habeas Corpus.* For good cause the court may permit the filing of a petition that is not on form MC-275.

(2) A petition on form MC-275 need not comply with the provisions of rule 56 that prescribe the form and content of a petition and require the petition to be accompanied by points and authorities.

(b) Petition filed by attorney

If the petition is filed by an attorney:

(1) The petition need not be filed on form MC-275 but must contain the information requested in that form and must comply with rule 14(a)–(b).

(2) Any memorandum of points and authorities accompanying the petition must comply with rule 14(a)–(b).

(3) The petition must be accompanied by a copy of any petition—excluding exhibits—pertaining to the same judgment and petitioner that was previously filed in any lower state court or any federal court. If such documents have previously been filed in the Supreme Court, the petition need only so state.

(4) Any supporting documents accompanying the petition must comply with rules 44(b)(1)(C) and 56(d).

(5) The petition and any memorandum of points and authorities must support any reference to a matter in the supporting documents by a citation to its index tab and page.

(6) If the petition asserts a claim that was the subject of an evidentiary hearing, the petition must be accompanied by a certified transcript of that hearing.

(7) The clerk must file an attorney's petition not complying with (1)–(6) if it otherwise complies with the rules of court, but the court may notify the attorney that it may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five days.

(c) Record

Before ruling on the petition, the court may order the custodian of any relevant record to produce the record or a certified copy to be filed with the court.

(d) Informal response

(1) The court may request an informal written response from the respondent, the real party in interest, or an interested person. The court must send a copy of any request to the petitioner.

(2) The response must be served and filed within 15 days or as the court specifies.

(3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 15 days or as the court specifies. The court may not deny the petition until that time has expired.

(e) Petition unrelated to appellate district

(1) A Court of Appeal may deny without prejudice a petition for writ of habeas corpus that is based primarily on facts occurring outside the court's appellate district, including petitions that question:

(A) the validity of judgments or orders of trial courts located outside the district, or

(B) the conditions of confinement or conduct of correctional officials outside the district.

(2) If the court denies a petition solely under (1), the order must state the basis of the denial and must identify the appropriate court in which to file the petition.

Rule 60 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 60(a)–(b) restates former rule 56.5.

Subdivision (b). New subdivision (b)(5) of revised rule 60 is a substantive change intended to assist the reviewing courts in processing habeas corpus petitions filed by attorneys. It implements a recent amendment to rule 56(d)(1) that requires documents submitted in support of a writ petition to be continuously paginated and index-tabbed by number or letter.

New subdivision (b)(6) of revised rule 60 is a substantive change intended to assist the reviewing courts in determining the merits of any habeas corpus petition that was the subject of an evidentiary hearing in a lower court.

Subdivision (b)(7) of revised rule 60 is former rule 56.5(d), conformed to revised rule 56(d)(2).

Subdivision (e). Revised rule 60(e) restates section 6.5 of the Standards of Judicial Administration.

CHAPTER 4. Administrative Provisions Governing Reviewing Courts

Rule 70. Preservation and destruction of Court of Appeal records

(a) Form in which records may be preserved

(1) Court of Appeal records may be preserved in any appropriate medium, including paper or an optical, electronic, magnetic, photographic, or microphotographic medium or other technology capable of accurately reproducing the original. The medium used must comply with the minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.

(2) If records are preserved in a medium other than paper, the following provisions of Government Code section 68150 apply: subdivisions (b)–(d); (f), excluding subdivision (f)(1); and (g)–(h).

(b) Permanent records

The Court of Appeal clerk must permanently keep the court's minutes and a register of appeals and original proceedings.

(c) Time to keep other records

(1) Except as provided in (2), the clerk may destroy all other records in a case 10 years after the decision becomes final, as ordered by the administrative presiding justice or, in a court with only one division, by the presiding justice.

(2) In a criminal case in which the court affirms a judgment of conviction, the clerk must keep the original reporter's transcript for 20 years after the decision becomes final.

Rule 70 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 70 is former rule 55(a)–(b). Former rule 55(c) is now new rule 71.

Rule 71. Court of Appeal minutes

(a) Purpose

Court of Appeal minutes should record the court's significant public acts and permit the public to follow the major events in the history of cases coming before the court.

(b) Required contents of minutes

The minutes must include:

(1) the filing date of each opinion, showing whether it was ordered published;

(2) orders granting or denying rehearings or modifying opinions;

(3) orders affecting an opinion's publication status, if issued after the opinion was filed;

(4) summaries of all courtroom proceedings, showing at a minimum:

(A) the cases called for argument,

(B) the justices hearing argument,

(C) the name of the attorney arguing for each party, and

(D) whether the case was submitted at the close of argument or the court requested further briefing;

(5) the date of submission, if other than the date of argument;

(6) orders vacating submission, including the reason for vacating and the resubmission date;

(7) orders dismissing appeals for lack of jurisdiction;

(8) orders consolidating cases;

(9) orders affecting a judgment or its finality date; and

(10) orders changing or correcting any of the above.

(c) Optional contents

At the court's discretion, the minutes may include such other matter as:

(1) assignments of justices by the Chief Justice;

(2) reports of the Commission on Judicial Appointments confirming justices; and

(3) memorials.

Rule 71 adopted effective January 1, 2005.

Advisory Committee Comment (2005)

New rule 71 is former rule 55(c).

Subdivision (b). New rule 71(b)(5) fills a gap but is not a substantive change. Former rule 55(c)(6) has been deleted as inconsistent with current practice: "clerical errors" are not corrected by court *order* and do not require *modification* of a published opinion. Former rule 55(c)(7) required the minutes to reflect any orders dismissing appeals for lack of jurisdiction "unless the lack of jurisdiction is patent and uncontested"; because any order dismissing an appeal for lack of jurisdiction should be noted in the minutes, new rule 71(b)(7) omits the exception.

Rule 75. Court of Appeal administrative presiding justice

(a) Designation

(1) In a Court of Appeal with more than one division, the Chief Justice may designate a presiding justice to act as administrative presiding justice. The administrative presiding justice serves at the pleasure of the Chief Justice for the period specified in the designation order.

(2) The administrative presiding justice must designate another member of the court to serve as acting administrative presiding justice in the administrative presiding justice's absence; if the administrative presiding justice does not make that designation, the Chief Justice must do so.

(3) In a Court of Appeal with only one division, the presiding justice acts as the administrative presiding justice.

(b) Responsibilities

The administrative presiding justice is responsible for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources.

(c) Duties

The administrative presiding justice must perform any duties delegated by a majority of the justices in the district with the Chief Justice's concurrence. In addition, the administrative presiding justice:

(1) *Personnel:* has general direction and supervision of the clerk/administrator and all court employees except those assigned to a particular justice or division;

(2) *Unassigned matters:* has the authority of a presiding justice with respect to any matter that has not been assigned to a particular division;

(3) *Judicial Council:* cooperates with the Chief Justice and any officer authorized to act for the Chief Justice in connection with the making of reports and the assignment of judges or retired judges under article VI, section 6 of the California Constitution;

(4) *Transfer of cases:* cooperates with the Chief Justice in expediting judicial business and equalizing the work of judges by recommending, when appropriate, the transfer of cases by the Supreme Court under article VI, section 12 of the California Constitution;

(5) *Administration:* supervises the administration of the court's day-to-day operations, including personnel matters, but must secure the approval of a majority of the justices in the district before implementing any change in court policies;

(6) *Budget:* has sole authority in the district over the budget as allocated by the Chair of the Judicial Council, including but not limited to budget transfers, execution of purchase orders, obligation of funds, and approval of payments; and

(7) *Facilities:* except as provided in (d), has sole authority in the district over the operation, maintenance, renovation, expansion, and assignment of all facilities used and occupied by the district.

(d) Geographically separate divisions

Under the general oversight of the administrative presiding justice, the presiding justice of a geographically separate division:

(1) generally directs and supervises all of the division's court employees not assigned to a particular justice;

(2) has authority to act on behalf of the division regarding day-to-day operations;

(3) administers the division budget for day-to-day operations, including expenses for maintenance of facilities and equipment; and

(4) operates, maintains, and assigns space in all facilities used and occupied by the division.

Rule 75 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 75 combines former rules 75 and 76.

Rule 76.1. Reviewing court clerk/administrator

(a) Selection

A reviewing court may employ a clerk/administrator selected in accordance with procedures adopted by the court.

(b) Responsibilities

Acting under the general direction and supervision of the administrative presiding justice, the clerk/administrator is responsible for planning, organizing, coordinating, and directing, with full authority and accountability, the management of the clerk's office and all nonjudicial support activities in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, and maximizes the use of judicial and other resources.

(c) Duties

Under the direction of the administrative presiding justice, the clerk/administrator:

(1) *Personnel:* directs and supervises all court employees assigned to the clerk/administrator by the administrative presiding justice and ensures that the court receives a full range of human resources support;

(2) *Budget:* develops, administers, and monitors the court budget and develops practices and procedures to ensure that annual expenditures are within the budget;

(3) *Contracts*: negotiates contracts on the court's behalf in accord with established contracting procedures and applicable laws;

(4) *Calendar management:* employs and supervises efficient calendar and caseflow management, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;

(5) *Technology:* coordinates technological and automated systems activities to assist the court;

(6) *Facilities:* coordinates facilities, space planning, court security, and business services support, including the purchase and management of equipment and supplies;

(7) *Records:* creates and manages uniform record-keeping systems, collecting data on pending and completed judicial business and the court's internal operation as the court and Judicial Council require;

(8) *Recommendations:* identifies problems and recommends policy, procedural, and administrative changes to the court;

(9) *Public relations:* represents the court to internal and external customers—including the other branches of government—on issues pertaining to the court;

(10) *Liaison:* acts as liaison with other governmental agencies;

(11) *Committees:* provides staff for judicial committees;

(12) *Administration:* develops and implements administrative and operational programs and policies for the court and the clerk's office; and

(13) *Other:* performs other duties as the administrative presiding justice directs.

(d) Geographically separate divisions

Under the general oversight of the clerk/administrator, an assistant clerk/administrator of a geographically separate division has responsibility for the nonjudicial support activities of that division.

Rule 76.1 repealed and adopted effective January 1, 2005.

Rule 76.5. Appointment of appellate counsel

(a) Procedures

(1) Each Court of Appeal must adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel.

(2) The procedures must require each attorney seeking appointment to complete a questionnaire showing the attorney's California State Bar number, date of admission, qualifications, and experience.

(b) List of qualified attorneys

(1) The Court of Appeal must evaluate the attorney's qualifications for appointment and, if the attorney is qualified, place the attorney's name on a list to receive appointments in appropriate cases.

(2) The court must divide its appointments list into at least two levels based on the attorneys' experience and qualifications, using criteria approved by the Judicial Council or its designated oversight committee.

(c) Demands of the case

In matching counsel with the demands of the case, the Court of Appeal should consider:

(1) the length of the sentence;

(2) the complexity or novelty of the issues;

(3) the length of the trial and of the reporter's transcript; and

(4) any questions concerning the competence of trial counsel.

(d) Evaluation

The court must review and evaluate the performance of each appointed counsel to determine whether counsel's name should remain on the list at the same level, be placed on a different level, or be deleted from the list.

(e) Contracts to perform administrative functions

(1) The court may contract with an administrator having substantial experience in handling appellate court appointments to perform any of the duties prescribed by this rule.

(2) The court must provide the administrator with the information needed to fulfill the administrator's duties.

Rule 76.5 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Revised rule 76.5 combines former rule 76.5 and former section 20(a)–(b) of the Standards of Judicial Administration. No substantive change is intended.

Subdivision (a). On its face, former rule 76.5 was applicable only to appeals in criminal cases, but in practice the rule was also applied to appeals in certain juvenile, mental health, paternity, and other cases in which indigent appellants were entitled to appointed appellate counsel. Reflecting that practice, revised rule 76.5(a) declares that the rule applies "in all cases in which indigents are entitled to appointed counsel."

Subdivision (b). Former rule 76.5(b) required the Court of Appeal to maintain "one or more lists" of attorneys qualified to receive appointments to represent indigent appellants. Consistently with practice, revised rule 76.5(b)(2) instead directs the court to maintain one list of such attorneys divided into at least two "levels" based on the attorneys' experience and qualifications.

Former rule 76.5(b) required the Court of Appeal, in establishing the lists of qualified attorneys, to "consider the guidelines in section 20 of the Standards of Judicial Administration." Subdivision (b) of section 20 classified qualified attorneys into three lists, but those classifications have become obsolete in practice. To facilitate ongoing management of the court-appointed counsel program, revised rule 76.5(b)(2) instead requires the Court of Appeal to use "criteria approved by the Judicial Council or its designated oversight committee." The "designated oversight committee" is currently the Appellate Indigent Defense Oversight Advisory Committee.

The second paragraph of former section 20(a) of the Standards of Judicial Administration prescribed four "factors" to be considered by the Court of Appeal in matching counsel with the demands of the case under rule 76.5. To promote efficiency, those factors have been moved from section 20 into rule 76.5 itself (subd. (c)).

Subdivision (d). Former rule 76.5(c) required the Court of Appeal to evaluate the performance of each appointed counsel to determine whether counsel's name should remain "on the same appointment list, be placed on a different list," or be deleted. Consistently with the usage adopted in revised rule 76.5(b), discussed above, revised rule 76.5(d) instead directs the Court of Appeal to determine whether counsel's name should remain "at the same level, be placed on a different level," or be deleted.

Subdivision (e). The final sentence of former rule 76.5(d) provided that "if the administrator is to perform the review and evaluation functions specified in subdivision (c), the court shall notify the administrator of any superior or substandard performance by appointed counsel." In a nonsubstantive change intended to make the rule consistent with the practice of the Courts of Appeal, revised rule 76.5(e)(2) deletes the quoted directive. The requirement of revised rule 76.5(e)(1) that the court "must provide the administrator with the information needed to fulfill the administrator's duties" ensures that the courts will, when necessary or advisable, communicate with the district appellate projects concerning the quality of appointed counsel's performance.

Rule 76.6. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

(a) Purpose

This rule defines the minimum qualifications for attorneys appointed by the Supreme Court in death penalty appeals and habeas corpus proceedings related to sentences of death. An attorney is not entitled to appointment simply because the attorney meets these minimum qualifications.

(b) General qualifications

The Supreme Court may appoint an attorney only if it has determined, after reviewing the attorney's experience, writing samples, references, and evaluations under (d) through (f), that the attorney has demonstrated the commitment, knowledge, and skills necessary to competently represent the defendant. An appointed attorney must be willing to cooperate with an assisting counsel or entity that the court may designate.

(c) Definitions

As used in this rule:

(1) "Appointed counsel" or "appointed attorney" means an attorney appointed to represent a person in a death penalty appeal or death penalty–related habeas corpus proceedings in the Supreme Court. Appointed counsel may be either lead counsel or associate counsel.

(2) "Lead counsel" means an appointed attorney or an attorney in the Office of the State Public Defender, the Habeas Corpus Resource Center, or the California Appellate Project in San Francisco who is responsible for the overall conduct of the case and for supervising the work of associate and supervised counsel. If two or more attorneys are appointed to represent a defendant jointly in a death penalty appeal, in death penalty–related habeas corpus proceedings, or in both classes of proceedings together, one such attorney will be designated as lead counsel.

(3) "Associate counsel" means an appointed attorney who does not have the primary responsibility for the case but nevertheless has casewide responsibility to perform the duties for which that attorney was appointed, whether they are appellate, habeas corpus, or appellate and habeas corpus duties. Associate counsel must meet the same minimum qualifications as lead counsel.

(4) "Supervised counsel" means an attorney who works under the immediate supervision and direction of lead or associate counsel but is not appointed by the Supreme Court. Supervised counsel must be an active member of the State Bar of California.

(5) "Assisting counsel or entity" means an attorney or entity designated by the Supreme Court to provide appointed counsel with consultation and resource assistance. Entities that may be designated include the Office of

the State Public Defender, the Habeas Corpus Resource Center, and the California Appellate Project in San Francisco.

(d) Qualifications for appointed appellate counsel

An attorney appointed as lead or associate counsel in a death penalty appeal must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) service as counsel of record for a defendant in seven completed felony appeals, including one murder case; or

(B) service as counsel of record for a defendant in five completed felony appeals and as supervised counsel for a defendant in two death penalty appeals in which the opening brief has been filed. Service as supervised counsel in a death penalty appeal will apply toward this qualification only if lead or associate counsel in that appeal attests that the supervised attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with Supreme Court practices and procedures, including those related to death penalty appeals.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense training, continuing education, or course of study, at least six hours of which involve death penalty appeals. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, and advocacy, taking into consideration all of the following:

(A) two writing samples—ordinarily appellate briefs—written by the attorney and presenting an analysis of complex legal issues;

(B) if the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) if the attorney is on a panel of attorneys eligible for appointments to represent indigents in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(e) Qualifications for appointed habeas corpus counsel

An attorney appointed as lead or associate counsel to represent a person in death penalty–related habeas corpus proceedings must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years.

(2) Either:

(A) service as counsel of record for a defendant in five completed felony appeals or writ proceedings, including one murder case, and service as counsel of record for a defendant in three jury trials or three habeas corpus proceedings involving serious felonies; or

(B) service as counsel of record for a defendant in five completed felony appeals or writ proceedings and service as supervised counsel in two death penalty–related habeas corpus proceedings in which the petition has been filed. Service as supervised counsel in a death penalty–related habeas corpus proceeding will apply toward this qualification only if lead or associate counsel in that proceeding attests that the attorney performed substantial work on the case and recommends the attorney for appointment.

(3) Familiarity with the practices and procedures of the California Supreme Court and the federal courts in death penalty–related habeas corpus proceedings.

(4) Within three years before appointment, completion of at least nine hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least six hours of which address death penalty habeas corpus proceedings. If the

Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(5) Proficiency in issue identification, research, analysis, writing, investigation, and advocacy, taking into consideration all the following:

(A) three writing samples—ordinarily two appellate briefs and one habeas corpus petition—written by the attorney and presenting an analysis of complex legal issues;

(B) if the attorney has previously been appointed in a death penalty appeal or death penalty–related habeas corpus proceeding, the evaluation of the assisting counsel or entity in that proceeding;

(C) recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) if the attorney is on a panel of attorneys eligible for appointments to represent indigent appellants in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(f) Alternative qualifications

The Supreme Court may appoint an attorney who does not meet the requirements of (d)(1) and (2) or (e)(1) and (2) if the attorney has the qualifications described in (d)(3)–(5) or (e)(3)–(5) and:

(1) The court finds that the attorney has extensive experience in another jurisdiction or a different type of practice (such as civil trials or appeals, academic work, or work for a court or prosecutor) for at least four years, providing the attorney with experience in complex cases substantially equivalent to that of an attorney qualified under (d) or (e).

(2) Ongoing consultation is available to the attorney from an assisting counsel or entity designated by the court.

(3) Within two years before appointment, the attorney has completed at least 18 hours of Supreme Court–approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study,

at least nine hours of which involve death penalty appellate or habeas corpus proceedings. The Supreme Court will determine in each case whether the training, education, or course of study completed by a particular attorney satisfies the requirements of this subdivision in light of the attorney's individual background and experience. If the Supreme Court has previously appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years before the request for a new appointment, the court, after reviewing counsel's previous work, may find that such representation constitutes compliance with this requirement.

(g) Attorneys without trial experience

If an evidentiary hearing is ordered in a death penalty–related habeas corpus proceeding and an attorney appointed under either (e) or (f) to represent a defendant in that proceeding lacks experience in conducting trials or evidentiary hearings, the attorney must associate an attorney who has such experience.

(h) Use of supervised counsel

An attorney who does not meet the qualifications described in (d), (e), or (f) may assist lead or associate counsel, but must work under the immediate supervision and direction of lead or associate counsel.

(i) Appellate and habeas corpus appointment

(1) An attorney appointed to represent a defendant in both a death penalty appeal and death penalty–related habeas corpus proceedings must meet the minimum qualifications of both (d) and (e) or of (f).

(2) Notwithstanding (1), two attorneys together may be eligible for appointment to represent a defendant jointly in both a death penalty appeal and death penalty–related habeas corpus proceedings if the Supreme Court finds that their qualifications in the aggregate satisfy the provisions of both (d) and (e) or of (f).

(j) Designated entities as appointed counsel

(1) Notwithstanding any other provision of this rule, the State Public Defender is qualified to serve as appointed counsel in death penalty appeals, the Habeas Corpus Resource Center is qualified to serve as appointed counsel in death penalty–related habeas corpus proceedings,

and the California Appellate Project in San Francisco is qualified to serve as appointed counsel in both classes of proceedings.

(2) When serving as appointed counsel in a death penalty appeal, the State Public Defender or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it finds the attorney qualified under (d)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(3) When serving as appointed counsel in a death penalty–related habeas corpus proceeding, the Habeas Corpus Resource Center or the California Appellate Project in San Francisco must not assign any attorney as lead counsel unless it finds the attorney qualified under (e)(1)–(5) or the Supreme Court finds the attorney qualified under (f).

(k) Attorney appointed by federal court

Notwithstanding any other provision of this rule, the Supreme Court may appoint an attorney who is under appointment by a federal court in a death penalty–related habeas corpus proceeding for the purpose of exhausting state remedies in the Supreme Court and for all subsequent state proceedings in that case, if the Supreme Court finds that attorney has the commitment, proficiency, and knowledge necessary to represent the defendant competently in state proceedings.

Rule 76.6 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (c). The definition of "associate counsel" in revised rule 76.6(c)(3) is intended to make it clear that although appointed lead counsel has overall and supervisory responsibility in a capital case, appointed associate counsel also has casewide responsibility to perform the duties for which he or she was appointed, whether they are appellate duties, habeas corpus duties, or appellate *and* habeas corpus duties. The change is not substantive.

Rule 77. Supervising progress of appeals

(a) Duty to ensure prompt filing

The administrative presiding justices of Courts of Appeal with more than one division in the same city and the presiding justices of all other Courts of Appeal are generally responsible for ensuring that all appellate records and briefs are promptly filed. Staff must be provided for that purpose, to the extent funds are appropriated and available.

(b) Authority

Notwithstanding any other rule, the administrative presiding justices and presiding justices referred to in (a) may:

(1) grant or deny applications to extend the time to file records, briefs, and other documents, except that a presiding justice may extend the time to file briefs in conjunction with an order to augment the record;

(2) order the dismissal of an appeal or any other authorized sanction for noncompliance with these rules, if no application to extend time or for relief from default has been filed before the order is entered; and

(3) grant relief from default or from a sanction other than dismissal imposed for the default.

Rule 77 repealed and adopted effective January 1, 2005.

Rule 78. Notice of failure to perform judicial duties

(a) Notice

(1) The Chief Justice or presiding justice must notify the Commission on Judicial Performance of a reviewing court justice's:

(A) substantial failure to perform judicial duties, including any habitual neglect of duty, or

(B) disability-caused absences totaling more than 90 court days in a 12-month period, excluding absences for authorized vacations and for attending schools, conferences, and judicial workshops.

(2) If the affected justice is a presiding justice, the administrative presiding justice must give the notice.

(b) Copy to justice

The Chief Justice, administrative presiding justice, or presiding justice must give the affected justice a copy of any notice under (a).

Rule 78 repealed and adopted effective January 1, 2005.

Rule 80. Local rules of Courts of Appeal

(a) California Rules of Court prevail

A Court of Appeal must accept for filing a record, brief, or other document that complies with the California Rules of Court despite any local rule imposing other requirements.

(b) Publication

(1) A Court of Appeal must submit any local rule it adopts to the Reporter of Decisions for publication in the advance pamphlets of the Official Reports.

(2) As used in this rule, "publication" means printing in the manner in which amendments to the California Rules of Court are printed.

(c) Effective date

A local rule cannot take effect sooner than 45 days after the publication date of the advance pamphlet in which it is printed.

Rule 80 repealed and adopted effective January 1, 2005.

TITLE 3. Miscellaneous Rules

DIVISION 3. Rules for Publication of Appellate Opinions

Rule 976. Publication of appellate opinions

(a) Supreme Court

All opinions of the Supreme Court are published in the Official Reports.

(b) Courts of Appeal and appellate divisions

Except as provided in (d), an opinion of a Court of Appeal or a superior court appellate division is published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final in that court.

(c) Standards for certification

No opinion of a Court of Appeal or a superior court appellate division may be certified for publication in the Official Reports unless the opinion:

(1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;

(2) resolves or creates an apparent conflict in the law;

(3) involves a legal issue of continuing public interest; or

(4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(d) Changes in publication status

(1) Unless otherwise ordered under (2), an opinion is no longer considered published if the Supreme Court grants review or the rendering court grants rehearing.

(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order publication of an opinion, in whole or in part, at any time after granting review.

(e) Editing

(1) Computer versions of all opinions of the Supreme Court and Courts of Appeal must be provided to the Reporter of Decisions on the day of filing. Opinions of superior court appellate divisions certified for publication must be provided as prescribed in rule 106.

(2) The Reporter of Decisions must edit opinions for publication as directed by the Supreme Court. The Reporter of Decisions must submit edited opinions to the courts for examination, correction, and approval before finalization for the Official Reports.

Rule 976 repealed and adopted effective January 1, 2005.

Rule 976.1. Partial publication

(a) Order for partial publication

A majority of the rendering court may certify for publication any part of an opinion meeting a standard for publication under rule 976.

(b) Opinion contents

The published part of the opinion must specify the part or parts not certified for publication. All material, factual and legal, including the disposition, that aids in the application or interpretation of the published part must be published.

(c) Construction

For purposes of rules 976, 977, and 978, the published part of the opinion is treated as a published opinion and the unpublished part as an unpublished opinion.

Rule 976.1 repealed and adopted effective January 1, 2005.

Rule 977. Citation of opinions

(a) Unpublished opinion

Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) Exceptions

An unpublished opinion may be cited or relied on:

(1) when the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel, or

(2) when the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(c) Citation procedure

A copy of an opinion citable under (b) or of a cited opinion of any court that is available only in a computer-based source of decisional law must be furnished to the court and all parties by attaching it to the document in which it is cited or, if the citation will be made orally, by letter within a reasonable time in advance of citation.

(d) When a published opinion may be cited

A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published.

Rule 977 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

A footnote to the published version of former rule 977(d) stated that a citation to an opinion ordered published by the Supreme Court after grant of review should include a reference to the grant of review and to any subsequent Supreme Court action in the case. Revised rule 977 deletes this footnote because it is not part of the rule itself and the event it describes rarely occurs in practice.

Rule 978. Requesting publication of unpublished opinions

(a) Request

(1) Any person may request that an unpublished opinion be ordered published.

(2) The request must be made by a letter to the court that rendered the opinion, concisely stating the person's interest and the reason why the opinion meets a standard for publication.

(3) The request must be delivered to the rendering court within 20 days after the opinion is filed.

(4) The request must be served on all parties.

(b) Action by rendering court

(1) If the rendering court does not or cannot grant the request before the decision is final in that court, it must forward the request to the Supreme Court with a copy of its opinion, its recommendation for disposition, and a brief statement of its reasons. The rendering court must forward these materials within 15 days after the decision is final in that court.

(2) The rendering court must also send a copy of its recommendation and reasons to all parties and any person who requested publication.

(c) Action by Supreme Court

The Supreme Court may order the opinion published or deny the request. The court must send notice of its action to the rendering court, all parties, and any person who requested publication.

(d) Effect of Supreme Court order to publish

A Supreme Court order to publish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 978 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (a). Former rule 978(a) required generally that a publication request be made "promptly," but in practice the term proved so vague that requests were often made after the Court of Appeal had lost jurisdiction. To assist persons intending to request publication and to give the Court of Appeal adequate time to act, revised rule 978(a)(3) specifies that the request must be made within 20 days after the opinion is filed. The change is substantive.

Subdivision (b). Former rule 978(a) did not specify the time within which the Court of Appeal was required to forward to the Supreme Court a publication request that it had not or could not have granted. In practice, however, it was not uncommon for the court to forward such a request after the Supreme Court had denied a petition for review in the same case or, if there was no such petition, had lost jurisdiction to grant review on its own motion. To assist the Supreme Court in timely processing publication requests, therefore, revised rule 978(b)(1) requires the Court of Appeal to forward the request within 15 days after the decision is final in that court. The change is substantive.

Rule 979. Requesting depublication of published opinions

(a) Request

(1) Any person may request the Supreme Court to order that an opinion certified for publication not be published.

(2) The request must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages.

(3) The request must concisely state the person's interest and the reason why the opinion should not be published.

(4) The request must be delivered to the Supreme Court within 30 days after the decision is final in the Court of Appeal.

(5) The request must be served on the rendering court and all parties.

(b) Response

(1) Within 10 days after the Supreme Court receives a request under (a), the rendering court or any person may submit a response supporting or opposing the request. A response submitted by anyone other than the rendering court must state the person's interest.

(2) A response must not exceed 10 pages and must be served on the rendering court, all parties, and any person who requested depublication.

(c) Action by Supreme Court

(1) The Supreme Court may order the opinion depublished or deny the request. It must send notice of its action to the rendering court, all parties, and any person who requested depublication.

(2) The Supreme Court may order an opinion depublished on its own motion, notifying the rendering court of its action.

(d) Effect of Supreme Court order to depublish

A Supreme Court order to depublish is not an expression of the court's opinion of the correctness of the result of the decision or of any law stated in the opinion.

Rule 979 repealed and adopted effective January 1, 2005.

Advisory Committee Comment (2005)

Subdivision (b). Former rule 979(a) required depublication requests to be made "by letter to the Supreme Court," but in practice many were incorporated in petitions for review. To clarify and emphasize the requirement, revised rule 979(a)(2) specifically states that the request "must not be made as part of a petition for review, but by a separate letter to the Supreme Court not exceeding 10 pages." The change is not substantive.

Rule 2. Time to appeal

(a) ***

(b) No extension of time; late notice of appeal

Except as provided in rule 45.1, no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal.

(Subd (b) adopted effective January 1, 2005.)

~~(b)~~(c) ***

(Subd (c) relettered effective January 1, 2005; adopted as subd (b) effective January 1, 2002.)

~~(c)~~(d) ***

(Subd (d) relettered effective January 1, 2005; adopted as subd (c) effective January 1, 2002.)

~~(d)~~(e) ***

(Subd (e) relettered effective January 1, 2005; adopted as subd (d) effective January 1, 2002.)

~~(e) Late notice of appeal~~

~~If a notice of appeal is filed late, the reviewing court must dismiss the appeal.~~

(Former subd (e) repealed effective January 1, 2005.)

(f) Appealable order

As used in (a) and ~~(d)~~(e), "judgment" includes an appealable order if the appeal is from an appealable order.

(Subd (f) amended effective January 1, 2005.)

Rule 2 amended effective January 1, 2005; repealed and adopted effective January 1, 2002.

Rule 15. Service and filing of briefs

(a)–(b) ***

(c) Service

(1) ***

(2) ~~Five~~ Four copies of each brief filed in a civil appeal must be served on the Supreme Court. If the Court of Appeal has ordered the brief sealed:

(A) the party serving the brief must place all four copies of the brief in a sealed envelope and attach a cover sheet that contains the information required by rule 14(b)(10) and labels the contents as "CONDITIONALLY UNDER SEAL," and

(B) the Court of Appeal clerk must promptly notify the Supreme Court of any court order unsealing the brief. In the absence of such notice the Supreme Court clerk must keep all copies of the brief under seal.

(3) ***

Subd (c) amended effective January 1, 2005; previously amended effective January 1, 2004.)

Rule 15 amended effective January 1, 2005; repealed and adopted effective January 1, 2002; previously amended effective January 1, 2003, and January 1, 2004.

Rule 30.1. Time to appeal

(a) Normal time

Unless otherwise provided by law, a notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order being appealed. Except as provided in rule 45.1, no court may extend the time to file a notice of appeal.

(Subd (a) amended effective January 1, 2005.)

(b)–(d) ***

Rule 30.1 amended effective January 1, 2005; adopted effective January 1, 2004.

Rule 39. Juvenile appeals

(a) [General provision] The rules governing appeals from the superior court in criminal cases are applicable to all appeals from the juvenile court and any appeal in an action under part 4 (commencing with section 7800) of division 12 of the Family Code, except where otherwise expressly provided by this rule or rule 39.1, 39.1A, or 39.1B, or where the application of a particular rule would be clearly impracticable or inappropriate. This rule does not apply to any action or proceeding heard by a traffic hearing officer, nor to any rehearing or an appeal from a denial of a rehearing following an order by a traffic hearing officer.

(Subd (a) amended effective January 1, 2001; adopted effective July 1, 1977; and previously amended effective July 1, 1987, July 1, 1989, and January 1, 1991.)

(b) [Notice of appeal; time for filing] In the cases provided by law, an appeal from the juvenile court is taken by filing with the clerk of that court a written notice of appeal within 60 days after the rendition of the judgment or the making of the order or, in matters heard by a referee who is not sitting as a judge pro tem, within 60 days after the order of the referee becomes final under rule 1417(c). When an application for a judicial rehearing of an order by a referee not sitting as a judge pro tem is denied under rule 1418, the notice of appeal shall be filed within 60 days after service of the referee's order in accordance with rule 1416(b)(3), or within 30 days after the entry of the order denying the application, whichever time is greater. Notice of appeal may be filed on Judicial Council form Notice of Appeal-Juvenile (JV-800). When a notice of appeal is received, the clerk shall mail a notification of the filing of the notice of appeal to each party other than the appellant, and all attorneys of record. In a juvenile dependency case, the clerk shall also mail a notification to any de facto parent, any court-appointed special advocate, and to the tribe of an Indian child. The clerk shall then proceed in accordance with rule 31.

(Subd (b) amended effective January 1, 1997; adopted effective July 1, 1977; previously amended effective January 1, 1991, January 1, 1993.)

(c) [Contents of record on appeal-normal record] The record on appeal shall include the following (which shall constitute the normal record):

(1) A clerk's transcript, containing copies of:

(a) the notice of appeal and any order made pursuant thereto;

(b) the petition and any notice of hearing addressed to the minor, the parent, or guardian;

(c) any application or motion for rehearing;

(d) all minutes of the court relating to the action;

(e) the findings of the juvenile court that the minor is within its jurisdiction;

(f) the judgment or order appealed from;

(g) any report by a probation officer, social worker, or duly appointed guardian ad litem.

(2) A reporter's transcript of the oral proceedings taken at the jurisdiction, disposition, review, and hearings under section 366.26 of the Welfare and Institutions Code, including oral arguments to the court and any oral opinions of the court, but excluding opening statements.

(3) To be transmitted as originals upon request by the reviewing court as provided in rule 10: any exhibit admitted in evidence or rejected.

(4) Those portions of the clerk's transcript, reporter's transcript, and exhibits incident to the order appealed from, if the appeal is taken from any subsequent order under section 395 or 800.

(Subd (c) amended effective January 1, 1993; adopted effective July 1, 1977; previously amended effective July 1, 1985, July 1, 1989, January 1, 1991.)

(d) [Request for additional record] Either party may request the inclusion in the record of any of the following:

(1) In the clerk's transcript:

(a) written motions made or notices of motion given by either side, and affidavits filed in support of or in opposition to a motion for rehearing or any other motion;

(b) any written opinion of the juvenile court.

(2) In the reporter's transcript:

(a) proceedings on any prehearing motions;

(b) opening statements

(3) To be transmitted as originals: any exhibits admitted in evidence or rejected that have not been requested by the reviewing court under subdivision (c)(3).

A party who desires any additional record shall file with the notice of appeal or as soon thereafter as is practicable an application describing the material desired and the points on which appellant intends to rely which make its inclusion appropriate. The court shall act on the application in accordance with rule 33(b).

(Subd (d) amended effective January 1, 1993; adopted effective July 1, 1977; previously amended July 1, 1985.)

(e) [Priority of juvenile appeals] An appeal from the juvenile court or an appeal in an action under Civil Code section 232 shall have precedence over all other cases, as provided by statute.

(Subd (e) amended effective July 1, 1987; adopted effective July 1, 1977.)

(f) [Confidentiality section 300 proceedings] In an appeal under rule 1435(b) or an appeal from an order or judgment under Civil Code section 232, the record on appeal and briefs may be inspected only by court personnel, the parties to the proceeding or their attorneys, and other persons designated by the court.

(Subd (f) amended effective January 1, 1991; adopted effective July 1, 1977; and previously amended effective July 1, 1981, and July 1, 1987.)

(g) [Confidential information section 300 proceedings] All records, briefs, or other documents filed by the parties, and opinions or orders filed by the court, shall protect the anonymity of the parties. The court may limit or prohibit public admission to hearings.

(Subd (g) adopted effective January 1, 1997.)

Rule 39 repealed effective January 1, 2005; adopted effective July 1, 1977; previously amended effective July 1, 1981, July 1, 1985, July 1, 1987, July 1, 1989, January 1, 1991, January 1, 1993, January 1, 1997, and January 1, 2001. The repealed rule related to juvenile appeals.

Former Rules

Former rule 39, relating to copy of opinion, was repealed effective January 1, 1975.

Original rule 39, also relating to copy of opinion, was repealed effective January 1, 1951.

Advisory Committee Comment

Neither the statutes nor the California Rules of Court presently provide guidance as to the handling of juvenile court matters on appeal. As a result, practices vary from county to county and from one appellate district to another. In most jurisdictions, the clerk's offices have applied the rules governing civil appeals to dependency proceedings and have attempted to apply the rules governing criminal appeals to section 602 cases, at least insofar as the costs and preparation of transcripts and the appointment of counsel are concerned. In section 601 proceedings, there has been a wide disparity of practices.

Subdivision (a) provides generally that the rules governing appeals from the superior court in criminal cases (Cal. Rules of Court, rules 30-38) apply to all appeals from the juvenile court. This would include appeals from section 300 dependency proceedings as well as section 601 or 602 proceedings. Although proceedings in juvenile court are not criminal proceedings (Welf. & Inst. Code §203) but "essentially civil" (*In re Dennis M.* (1969) 70 Cal.2d 444, 462), the application of the general rules relating to criminal appeals to all juvenile appeals would better enable the appellate courts to implement the

legislative policy that juvenile court matters be handled expeditiously at the appellate as well as at the trial court level (see Welf. & Inst. Code §§395, 800; cf. *Joe Z.* v. *Superior Court* (1970) 3 Cal.3d 797, 801). The general criminal rules would not apply, however, where express provision is made to the contrary in this rule (see, e.g., subds. (b), (c), (d)) or where the application of a particular rule would be clearly impracticable or inappropriate (see, e.g., rule 32(b); *In re William M.* (1970) 3 Cal.3d 16, 26, n. 17 (right to bail not recognized in juvenile cases)).

Subdivision (b), relating to the time for filing the notice of appeal, is based upon rules 3(b) and 31(a). If the trial proceedings are conducted by the juvenile court judge or, if the judge has conducted a hearing de novo following an initial hearing before the referee, the notice of appeal must be filed within 60 days after the rendition of the judgment or the making of the order by the judge. (See rule 31(a)); see also *In re Sarah L.* (1974) 43 Cal.App.3d 88 (judicial granting of rehearing under Welf. & Inst. Code §559 not appealable).) In the case of appealable matters heard by a referee (see Welf. & Inst. Code §§395, 800), the notice of appeal must be filed within 60 days after the referee's order becomes final under rule 1318(c). A special provision allowing an extended time for filing the notice of appeal applies whenever an application for rehearing of a referee order is made and denied under rule 1319. As an order denying a rehearing is not ordinarily considered appealable (*In re Joe R.* (1970) 12 Cal.App.3d 80; but see *In re Edgar M.* (1975) 14 Cal.3d 727, 740), the order entered by the referee is usually viewed as being appealable. (See Judicial Council of California, Nineteenth Biennial Report (1963) Administration of Justice Under the Juvenile Court Law, Pt. I, Ch. 16, p. 63, at p. 83.) The rehearing application procedure, however, could consume at least 45 of the 60 days within which the notice of appeal from the referee's order must be filed. (See rule 1319(c).) For this reason, subdivision (b) provides that the time for filing the notice of appeal in these cases shall be 60 days after the service of the referee's order or 30 days after the entry of the juvenile court judge's order denying the application for rehearing, whichever time is greater. (Cf. rule 3(b).)

Subdivision (c) prescribes what is to be included in a normal record on appeal. It is analogous to rules 33(a) and 34.

Subdivision (d) lists those matters which the parties may request to be included in the record on appeal.

Subdivision (e), relating to the priority of juvenile appeals, is based on sections 395 and 800.

Drafter's Notes

1981 Rule 39 was amended to provide for confidentiality of the record and briefs in an appeal from proceedings under W & I C §300.

1985 Rule 39 was amended to include in the normal record on appeal of a juvenile case the report of the probation officer, the social worker, or the appointed guardian ad litem.

1987 The council amended rule 39, which previously dealt only with appeals from the juvenile court, to make the rule applicable to appeals in actions under Civil Code section 232 to declare a child free from parental custody and control.

1989 The council amended rule 39 to clarify the right to appeal from the denial of rehearing of the decision of a juvenile traffic hearing office and to specify the record on appeal for those cases.

1990 The council amended rule 39 to conform to statutory and rule changes on juvenile appeals.

1993 The council amended rules 39 and 39.2 to change the expiration date of each rule from January 1, 1993, to January 1, 1994. Rule 39 also is amended to include in the normal record on appeal transcripts of oral arguments and oral opinions of the juvenile court.

1997 Rules 39 and 39.1A, on juvenile appeals, were amended to clarify procedures on filing notice of appeals and to provide that all information in the appellate file is confidential.

2001 Rules 39, 39.1, and 39.1A were amended to correctly reference the Family Code.

Rule 39.1. Special rule for dependency and freedom from custody appeals

(a) [Applicability of rule] This rule applies to any appeal in an action under either Part 4 (commencing with section 7800) of Division 12 of the Family Code or Welfare and Institutions Code section 300.

(Subd (a) amended effective January 1, 2001; previously amended effective January 1, 1994.)

(b) [Notice of appeal] The clerk shall give notice of the filing of a notice of appeal in accordance with rule 1(b).

(c) [Copies of record on appeal] Notwithstanding rule 35, the clerk shall not deliver copies of the record on appeal to the Attorney General or the district attorney unless that office represents a party.

(d) [Copies of briefs] Notwithstanding rules 33(d)(1) and 44.5, the parties must not serve briefs on the Attorney General or the district attorney unless that office represents a party. If the Court of Appeal has appointed appellate counsel for any party, the county child welfare department must serve two copies of its briefs on that counsel and one copy of its briefs on the appellate project for the district, if applicable.

(Subd (d) amended effective July 1, 2004; previously amended effective January 1, 2004.)

(e) [Copies to Supreme Court] Notwithstanding rule 44(b)(2)(ii), proof of delivery of five copies of each brief to the Supreme Court shall not be required.

(Subd (e) amended effective January 1, 1995.)

(f) [Time for filing notice of appeal] Notice of appeal shall be filed within 60 days after the making of an appealable order or, if the matter was heard by a referee who was not sitting as a temporary judge, within 60 days after the order becomes final under rule 1417(c).

(Subd (f) as adopted effective January 1, 1992.)

Rule 39.1 repealed effective January 1, 2005; adopted effective July 1, 1987; previously amended effective January 1, 1992, January 1, 1994, January 1, 1995, January 1, 2001, January 1, 2004, and July 1, 2004. The repealed rule related to special rule for dependency and freedom from custody appeals.

Drafter's Notes

1987 The council adopted rule 39.1, applicable to appeals in actions under Civil Code section 232 and Welfare and Institutions Code section 300. The new rule defines the responsibility of the clerk to give notice of the filing of the appeal and exempts those appeals from the requirement that a copy of the record and briefs be served on the People and that copies of the briefs be delivered to the Supreme Court.

1992 Rule 39.1, the special rule for dependency and freedom from custody appeals, was amended to make it clear that in a case heard by a referee who was not sitting as a temporary judge, and in which there was no rehearing by a judge of the referee's order, the time for appeal runs from the date the referee's order becomes final.

Rule 39.2, the special rule governing appeals from Orange County Superior Court orders under Civil Code section 232, was amended to apply, also, to that court's appealable orders under section 300 of the Welfare and Institutions Code.

1994 These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot project statewide to specify procedures for expediting appeals from judgments freeing children from parental custody and control.

1995 The council also . . . amended rules 39.1 and 39.4 (special rules for dependency and conservatorship appeals) to conform to rule 44 by requiring that five rather than seven copies of each Court of Appeal brief be filed with the California Supreme Court.

2001 Rules 39, 39.1, and 39.1A were amended to correctly reference the Family Code.

Rule 39.1A. Appeals from orders or judgments terminating parental rights

(a) [Applicability] Notwithstanding any other rule to the contrary, this rule applies to appeals from orders or judgments terminating parental rights under Welfare and Institutions Code section 366.26, or freeing children from parental custody and

control under Part 4 (commencing with section 7800) of Division 12 of the Family Code.

(Subd (a) amended effective January 1, 2001.)

(b) [Order setting a hearing under section 366.26; limitations on appeal] A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made by the juvenile court in setting the hearing under section 366.26.

(Subd (b) amended effective January 1, 1995.)

(c) [Notice of appeal; record on appeal] Immediately on the filing of the notice of appeal, the clerk shall mail a notification of the filing of the notice of appeal to each party other than the appellant, to all attorneys of record, to any de facto parent, any court-appointed special advocate, and to the tribe of an Indian child. The clerk shall then assemble the record on appeal by (1) notifying each court reporter for each hearing that is the subject of the appeal by telephone and in writing to prepare a reporter's transcript and to deliver the transcript to the clerk no more than 20 days after the notice of appeal is filed, and (2) preparing the clerk's transcript under rule 35(a).

The normal record on appeal shall include:

(1) Reporter's transcripts of the portions of the hearing from which the appeal is taken;

(2) All findings and orders in the dependency case and any other findings and orders of which the court took judicial notice;

(3) The original petition or petitions;

(4) The reports prepared and submitted to the court for the hearing from which the appeal is taken, by any social worker, therapist or other expert; and

(5) Any other documents or evidence considered by the court in its findings and orders from which the appeal is taken.

Immediately on completion of the transcripts, the clerk shall certify the record as correct, deliver it by the most expeditious means to the reviewing court, and transmit copies to the attorneys for appellant, respondent, the child, and the appointed counsel administrator for the district appellate project, by any method as fast as the express mail service of the United States Postal Service.

The cover shall bear the conspicuous notation, "Appeal from order terminating parental rights under [Welfare and Institutions Code section 366.26] or [Family Code section 7800]," with the appropriate code section number shown as illustrated in the bracketed phrases.

(Subd (c) amended effective January 1, 2001; previously amended January 1, 1997.)

(d) [Augmentation and correction of the record] Augmentation or correction of the record shall be done under rule 12 or rule 35(e). Preparation of a supplemental transcript pursuant to an order under this subdivision shall be given highest priority. The procedures described in subdivision (c) shall be followed when applicable. Any request for augmentation by the appellant shall be filed within 15 days after counsel has received the record on appeal. Any request for augmentation by the respondent shall be filed within 15 days after the filing of appellant's opening brief. If available, the request for augmentation shall include copies of requested documents to be added to the record.

(e) [Limitation of appeal] The review on appeal of the findings and orders of the juvenile court in terminating parental rights is limited to the record on appeal of the hearings on the issues that were before the court under Welfare and Institutions Code section 366.26. The review shall not include a review of any prior hearings in the dependency case unless the party and court have complied with rule 39.1B.

(Subd (e) adopted effective January 1, 2001.)

(f) [Appellate procedure] The judges and clerks of the superior and reviewing courts shall adopt procedures to identify clearly the record and expedite all processing of a case to which this rule applies. The clerks of the courts shall provide data required to assist the Judicial Council in evaluating the effectiveness of this rule.

(Subd (f) relettered effective January 1, 2001; adopted as subd (e) effective January 1, 1994.)

(g) [Briefs] To permit determination within 250 days of the filing of the notice of appeal, the appellant's opening brief shall be served and filed within 30 days after the filing of the record in the reviewing court. The respondent's brief shall be served and filed within 30 days after the filing of the appellant's opening brief. The minor's opening brief and appellant's reply brief, if any, shall be served and filed within 20 days after filing of the respondent's brief, unless minor's counsel is granted leave to file the minor's opening brief at a different time. Briefs shall conform to rule 37(b).

(Subd (g) relettered effective January 1, 2001; adopted as subd (f) effective January 1, 1994.)

(h) [Argument and submission] Oral argument shall be held no later than 60 days after appellant's reply brief is filed or is due to be filed, unless waived or extended for good cause by the reviewing court. Counsel shall file and serve any request for oral argument, referencing rule 39.1A, within 15 days after appellant's reply brief is filed or is due to be filed. If oral argument is waived, the case shall be deemed submitted not later than the sixtieth day after appellant's reply brief is filed or is due to be filed.

(Subd (h) relettered effective January 1, 2001; adopted as subd (g) effective January 1, 1994; amended effective January 1, 1996.)

(i) [Extensions of time] Only the reviewing court may grant extensions of time to prepare the record or to serve and file briefs. The court shall require an exceptional showing of good cause before granting any extension. The trial court shall not grant any extensions of time.

(Subd (i) relettered effective January 1, 2001; adopted as subd (h) effective January 1, 1994.)

(j) [Confidential information-section 300 proceedings] In appeals under this rule, the record on appeal and briefs may be inspected only by court personnel, the parties to the proceedings, their attorneys, and other persons designated by the court. All records, briefs, or other documents filed by the parties, and opinions or orders filed by the court, shall protect the anonymity of the parties. The court may limit or prohibit public admission to hearings.

(Subd (j) relettered effective January 1, 2001; adopted as subd (i) effective January 1, 1997.)

(Previous subd (j) repealed effective January 1, 1998; adopted as subd (i) effective January 1, 1994, operative until January 1, 1998; relettered effective January 1, 1997; previously amended effective January 1, 1996.)

Rule 39.1A repealed effective January 1, 2005; adopted effective January 1, 1994; previously amended effective January 1, 1995, January 1, 1996, January 1, 1997, January 1, 1998, and January 1, 2001. The repealed rule related to appeals from orders or judgments terminating parental rights.

Drafter's Notes

1994 Rule 39.1A is adopted to establish a two-year pilot project statewide to specify procedures for expediting appeals from judgments terminating parental rights. The primary goal of the pilot project is to achieve a permanent and stable placement for a child as quickly as possible by ensuring that any appeal in these cases is determined within 250 days after the filing of the notice of appeal.

1995 In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462

to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

1996 The Judicial Council of California has amended rule 39.1A to (1) change the expiration date in subdivision (i) from January 1, 1996, to January 1, 1998, in order to extend the statewide pilot project on appeals from termination of parental rights proceedings; and (2) permit a good cause exception to the 60-day rule for oral argument.

1997 Rules 39 and 39.1A, on juvenile appeals, were amended to clarify procedures on filing notice of appeals and to provide that all information in the appellate file is confidential.

1998 This rule was amended to remove the January 1, 1998, sunset clause. The rule provides procedures for appeals in cases terminating parental rights. It was originally enacted as an experimental statewide pilot project. Four years of experience with the rule have proved it to be a useful step toward achieving timely permanency for children and families.

2001 Rules 39, 39.1, and 39.1A were amended to correctly reference the Family Code. Rules 39.1A and 39.1B were amended to clarify the record that needs to be prepared for appeal, listing what it must include.

Rule 39.1B. Special rule for orders setting a hearing under Welfare and Institutions Code section 366.26

(a) [Purpose] The purpose of this rule, as mandated by statute, is to facilitate and implement the following policies:

(1) To achieve a substantive and meritorious review by the appellate court within the period specified in Welfare and Institutions Code sections 361.5, 366.21, and 366.22 for the commencement of a hearing under section 366.26; and

(2) To encourage and assist the appellate court to determine on their merits all writ petitions filed to challenge the findings and orders of the juvenile court in setting a hearing under section 366.26. Such petitions shall be handled in conformance with standard writ practice and procedure except as otherwise specified in these rules.

(Subd (a) amended effective January 1, 1998.)

(b) [Applicability] This rule applies to all petitions for extraordinary writ challenging the findings and orders entered on or after January 1, 1995, by a juvenile court in setting a hearing under section 366.26.

(c) [Order] For purposes of this rule, the date of the order, at which the findings and orders of the juvenile court in setting a hearing under section 366.26 are made, is the date on which the court orally or in writing states its order on the record, whichever occurs first.

(d) [Limitations of appeal] The findings and orders of the juvenile court in setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

(e) [Failure to file a petition for writ; precludes appeal] Failure by a party to file a petition for extraordinary writ review as specified in this rule shall preclude that party

from obtaining subsequent review on appeal of the findings and orders made by a juvenile court in setting a hearing under section 366.26.

(f) [Notice of intent to file writ petition and request for record; service; jurisdiction] To permit determination of the writ petition prior to the scheduled date for the hearing under section 366.26 of the Welfare and Institutions Code on the selection of the permanent plan, a notice of intent to file a writ petition and request for record shall be filed with the clerk of the juvenile court within 7 days of the date of the order setting a hearing under section 366.26, or if the order was made by a referee not sitting as a judge pro tem, within 7 days after the order of the referee becomes final under rule 1417(c). The notice of intent to file a writ petition shall be signed by the party intending to file a writ petition, or if to be filed on behalf of the child, by the attorney of record for the child. Upon a finding of good cause, based on a declaration by the attorney of record as to why the party could not sign the notice, the appellate court may waive the requirement of the party's signature. The period for filing a notice of intent to file a writ petition and request for record shall be extended 5 days, if the party received notice of the order setting the hearing under section 366.26 of the Welfare and Institutions Code only by mail. Judicial Council form *Notice of Intent to File Writ Petition and Request for Record* (JV-820) may be used. The notice of intent to file a writ petition shall include, if known, all dates of the hearing that resulted in the order setting the hearing under section 366.26 of the Welfare and Institutions Code. The clerk shall serve a copy of the notice of intent to file a writ petition on each party, including the child, parent, any legal guardian, and any person who has been declared a de facto parent and given standing to participate in the juvenile court proceedings, and on the probation officer or social worker, each counsel of record, present custodian of a dependent child, and any court-appointed child advocate, as prescribed by rule 1407. The clerk shall also serve, by first class mail or fax, on the clerk of the reviewing court, a copy of the notice of intent to file a writ petition and a proof of service list. Upon receipt of the notice of intent to file a writ petition, the clerk of the reviewing court shall lodge the notice, whereupon the reviewing court acquires jurisdiction of the writ proceedings.

(Subd (f) amended effective July 1, 1999; previously amended effective July 1, 1995, January 1, 1996, and January 1, 1997.)

(g) [Record] Immediately on the filing of the notice of intent to file a writ petition and request for record, the clerk of the juvenile court shall assemble the record (1) notifying each court reporter by telephone and in writing to prepare a reporter's transcript of each session of the hearing at which the order setting the hearing under section 366.26 was made and to deliver the transcript to the clerk no more than 12 days after the notice of intent to file a writ petition and request for record are filed, and (2) preparing the clerk's transcript under rule 35(a).

The record shall include all reports and minute orders contained in the juvenile court file, a reporter's transcript of all sessions of the hearing at which the order setting a hearing under section 366.26 was made, and any additional evidence or documents considered by the court at that hearing.

Immediately on completion of the transcript, the clerk shall certify the record as correct, and deliver it by the most expeditious means to the reviewing court, and transmit copies to the petitioner and parties or counsel of record, by any method as fast as the express mail service of the United States Postal Service. Upon receipt of the transcript and record, the clerk of the reviewing court shall notify all parties that the record has been filed and indicate the date on which the 10-day period for filing the writ petition will expire.

(Subd (g) amended effective January 1, 2001; previously amended effective January 1, 1996, and January 1, 1998.)

(h) [Petitioner; trial counsel] Trial counsel for the petitioning party, or in the absence of trial counsel, the party, is responsible for filing the petition for extraordinary writ. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedures.

(i) [Petition form; JV-825] The petition for extraordinary writ may be filed on Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ. Petitions for extraordinary writ submitted on Judicial Council form Writ Petition-Juvenile (JV-825) shall be accepted for filing by the appellate court. All petitions shall be liberally construed in favor of their sufficiency. The processing of the petition for writ shall not be delayed or impeded due to technical defects or omissions.

(j) [Contents of petition for writ; service] The petition for extraordinary writ shall summarize the factual basis for the petition. Petitioner need not repeat facts as they appear in any attached or submitted record, provided, however, that references to specific portions of the record, their significance to the grounds alleged, and disputed aspects of the record will assist the reviewing court and shall be noted. Petitioner shall attach applicable points and authorities. Petitioner shall give notice to all parties entitled to receive notice under rule 1407.

(Subd (j) amended effective January 1, 1996.)

(k) [Time for filing writ petition] The writ petition shall be served and filed within 10 days after the filing of the record in the reviewing court.

(Subd (k) amended effective January 1, 1998; previously amended effective January 1, 1996.)

(l) [Notice of action] The court may deny the petition using Judicial Council form *Denial of Petition* (JV-826) in appropriate cases. In all cases in which the court intends to issue a determination on the merits, the court shall issue an Order to Show Cause or an Alternative Writ.

(Subd (l) adopted effective January 1, 1998.)

(m) [Time for filing response] Any response shall be served and filed within 10 days after the filing of the writ petition, or within 15 days after filing if the writ petition was served by mail, or within 10 days of receiving a request for a response from the reviewing court, unless a shorter time is designated by the court.

(Subd (m) adopted effective January 1, 1998.)

(n) [Augmentation and correction of the record] If the court requires additional records or transcripts, the court may grant up to 15 additional days for the preparation and submission of the full record. Augmentation or correction of the record shall be done under rule 12 or rule 35(e). Preparation of a supplemental transcript pursuant to an order under this subdivision shall be given highest priority. The procedures described in subdivision (g) shall be followed when applicable. Any request for augmentation by the petitioner shall be filed within 5 days after counsel has received the initial record. Any further request for augmentation by a responding party shall be filed within 5 days after the filing of the petition. If available, the request for augmentation shall include copies of requested documents to be added to the record.

(Subd (n) relettered effective January 1, 1998; adopted as subd (l) effective January 1, 1995; previously amended effective January 1, 1996.)

(o) [Decision on the merits] Absent exceptional circumstances the appellate court shall review the petition for extraordinary writ and decide it on the merits by written opinion.

(Subd (o) relettered and amended effective January 1, 1998; adopted as subd (m) effective January 1, 1995.)

(p) [Stay] A request by petitioner for a stay of the hearing set under section 366.26 shall not be granted unless the petition for extraordinary writ raises issues of substantial complexity and adequate review requires extraordinary research and analysis.

(Subd (p) relettered effective January 1, 1998; adopted as subd (n) effective January 1, 1995.)

(q) [Hearing on the petition] Oral argument shall be held no later than 30 days after the response is filed or due to be filed, unless waived, or unless extended for good cause by the reviewing court. If oral argument is waived, the case shall be deemed submitted not later than the thirtieth day after the response is filed or is due to be filed.

(Subd (q) relettered effective January 1, 1998; adopted as subd (o) effective January 1, 1995; previously amended effective January 1, 1996.)

(r) [Notice of decision] The clerk of the reviewing court shall promptly transmit any notice of decision to the petitioner. If a writ or order issues directed to any judge or court, the clerk of the reviewing court shall promptly transmit a certified copy to the court. If the writ or order stays or prohibits proceedings scheduled to occur within 7 days of its issuance, or if the writ or order requires that action be taken by the respondent within 7 days, or in any other urgent situation, the clerk of the reviewing court shall make a reasonable effort to give telephone notice to the clerk of the court or tribunal below, who shall notify the judge or other officer most directly concerned. Telephone notice of the summary denial of a writ is not required, whether or not a stay was previously issued.

(Subd (r) relettered effective January 1, 1998; adopted as subd (p) effective January 1, 1995.)

(s) [Implementation of the rule; protocol] The administrative presiding justice of each appellate district is encouraged to convene a committee of representatives of the appellate and trial court legal community to design procedures and protocols to facilitate the implementation of this rule and the intent of the legislation to expedite resolution of these issues.

(Subd (s) relettered effective January 1, 1998; adopted as subd (q) effective January 1, 1995.)

(t) [Rule 56 not applicable] The provisions of rule 56 do not apply to these petitions for extraordinary writ.

(Subd (t) relettered effective January 1, 1998; adopted as subd (r) effective January 1, 1995.)

(u) [Confidential information section 300 proceedings] In proceedings under this rule, the record and petition and responses may be inspected only by court personnel, the parties to the proceedings, their attorneys, and other persons designated by the court. All records, briefs, or other documents filed by the parties, and opinions or orders filed by the court, shall protect the anonymity of the parties. The court may limit or prohibit public admission to hearings.

(Subd (u) relettered effective January 1, 1998; adopted as subd (s) effective January 1, 1997.)

Rule 39.1B repealed effective January 1, 2005; adopted effective January 1, 1995; previously amended effective July 1, 1995, January 1, 1996, January 1, 1997, January 1, 1998, July 1, 1999, and January 1, 2001. The repealed rule related to special rule for orders setting a hearing under Welfare and Institutions Code section 366.26.

Drafter's Notes

January 1995-In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form *Writ Petition–Juvenile* (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek

an extraordinary writ by filing a new form, *Notice of Intent to File Writ Petition and Request for Record* (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

July 1995 On the recommendation of the Family and Juvenile Law Standing Advisory Committee, the council made technical amendments to rules 39.1B(f) and 1436.5(e) specifying that the trial clerk shall serve a copy of any notice of intent to file a writ petition on the clerk of the reviewing court.

1997 Rule 39.1B, on special writ procedures for orders setting a hearing under Welfare and Institutions Code section 366.26, was amended to clarify procedures for filing notices of intent to file writ petitions, and to address confidential information regarding section 300 proceedings.

1998 This rule was amended to clarify procedures relating to appellate review of orders setting a hearing under Welfare and Institutions Code section 366.26. It specifies that writ petitions filed under rule 39.1B are to be handled in conformance with standard writ practice and procedure, unless otherwise specified in the rule. It also specifies that absent exceptional circumstances, the appellate court will review the petition for extraordinary writ and decide it on the merits by written opinion.

1999 This amendment clarifies and conforms rule 39.1B to statutory changes.

2001 Rules 39.1A and 39.1B were amended to clarify the record that needs to be prepared for appeal, listing what it must include.

Rule 39.2. Experimental project for Orange County juvenile appeals

(a) [Applicability] Notwithstanding any other rule to the contrary, this rule applies to appealable orders of the Orange County Superior Court under section 300 et seq. of the Welfare and Institutions Code and to appeals from judgments of the Orange County Superior Court freeing minors from parental custody and control under Civil Code section 232.

(Subd (a) amended effective January 1, 1992; adopted effective January 1, 1989.)

(b) [Order setting a hearing under section 366.26; limitations on appeal] A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made by the juvenile court in setting the hearing under section 366.26.

(Subd (b) amended effective January 1, 1995.)

(c) [Record on appeal] Immediately on the filing of the notice of appeal, the clerk shall assemble the record on appeal by

(1) notifying the court reporter by telephone and in writing to prepare a reporter's transcript and to deliver the transcript to the clerk no more than 20 days after the notice of appeal is filed, and

(2) preparing the clerk's transcript under rule 35(a).

The record on appeal shall include all portions of a dependency case of which the court has taken judicial notice.

Immediately on completion of the transcripts, the clerk shall certify the record as correct, hand carry it to the reviewing court, and transmit copies to the attorneys for appellant, respondent, the minor, and Appellate Defenders, Inc., by any method as fast as the express mail service of the United States Postal Service.

The cover shall bear the conspicuous notation "Appeal from order under [Welfare and Institutions Code section 300]."

(Subd (c) amended effective January 1, 1994.)

(d) [Augmentation and correction of the record] Augmentation or correction of the record shall be done under rule 12. Preparation of a supplemental transcript pursuant to an order under this subdivision shall be given highest priority. The procedures described in subdivision (c) shall be followed when applicable.

(e) [Appellate procedure] The judges and clerks of the superior and reviewing courts shall adopt procedures to identify clearly the record and expedite all processing of a case to which this rule applies. The clerks of the courts shall provide data required to assist the Judicial Council in evaluating the effectiveness of this rule.

(f) [Briefs] To permit determination within 250 days of the filing of the notice of appeal, the appellant's opening brief shall be served and filed within 30 days after the filing of the record in the reviewing court. The respondent's brief shall be served and filed within 30 days after the filing of the appellant's opening brief. The minor's opening brief and appellant's reply brief, if any, shall be served and filed within 20 days after filing of the respondent's brief. Briefs shall conform to rule 37(b).

(Subd (f) amended effective January 1, 1994.)

(g) [Argument and submission] Oral argument shall be held no later than 60 days after appellant's reply brief is filed or is due to be filed. If oral argument is waived, the case shall be deemed submitted as of the sixtieth day after appellant's reply brief is filed.

(h) [Extensions of time] Only the reviewing court may grant extensions of time to prepare the record or to serve and file briefs. The court shall require an exceptional showing of good cause before granting any extension. The trial court shall not grant any extensions of time.

(i) [Expiration of this rule] Subdivision repealed effective January 1, 1995.

(Subd (i) repealed effective January 1, 1995; previously amended effective January 1, 1993, January 1, 1994.)

Rule 39.2 repealed effective January 1, 2005; adopted effective January 1, 1989; previously amended January 1, 1992, January 1, 1993, January 1, 1994, and January 1, 1995. The repealed rule related to experimental project for Orange County juvenile appeals.

Drafter's Notes

1988 Recent legislation (Stats. 1988, ch. 805) requires the Judicial Council to implement a four-year pilot project in Orange County to expedite appeals from proceedings under Welfare and Institutions Code section 366.26 or Civil Code section 232 (freedom from parental control). The council adopted rule 39.2 to establish procedures governing appeals in the project.

1992 See note following rule 39.1.

1993 The council amended rules 39 and 39.2 to change the expiration date of each rule from January 1, 1993, to January 1, 1994.

1994 These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot project statewide to specify procedures for expediting appeals from judgments freeing children from parental custody and control.

1995 The council also amended rules 39.2 and 39.2A to continue the pilot projects on dependency appeals . . . .

In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition–Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

Rule 39.2A. Experimental project for Imperial County and San Diego County juvenile appeals

(a) [Applicability] Notwithstanding any other rule to the contrary, this rule applies to appealable orders of the Imperial County and San Diego County Superior Courts under section 300 et seq. of the Welfare and Institutions Code and to appeals from

judgments of the Imperial County and San Diego County Superior Courts freeing minors from parental custody and control under Civil Code section 232.

(b) [Order setting a hearing under section 366.26; limitations on appeal] A judgment, order, or decree setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) An extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) The petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record.

Failure to file a petition for extraordinary writ review within the period specified by rules 39.1B and 1436.5, to substantively address the issues challenged, or to support the challenge by an adequate record, shall preclude subsequent review on appeal of the findings and orders made by the juvenile court in setting the hearing under section 366.26.

(Subd (b) amended effective January 1, 1995.)

(c) [Record on appeal] Immediately on the filing of the notice of appeal, the clerk shall assemble the record on appeal by

(1) notifying the court reporter by telephone and in writing to prepare a reporter's transcript and to deliver the transcript to the clerk no more than 20 days after the notice of appeal is filed, and

(2) preparing the clerk's transcript under rule 35(a).

The record on appeal shall include all portions of a dependency case of which the court has taken judicial notice.

Immediately on completion of the transcripts, the clerk shall

(1) certify the record as correct,

(2) hand carry it from the San Diego County Superior Court to the reviewing court or deliver by the most expeditious means from the Imperial County Superior Court to the reviewing court, and

(3) transmit copies to the attorneys for appellant, respondent, the minor, and Appellate Defenders, Inc., by any method as fast as the express mail service of the United States Postal Service.

~~The cover shall bear the conspicuous notation "Appeal from order under [Welfare and Institutions Code section 300]."~~

~~*(Subd (c) amended effective January 1, 1994.)*~~

~~**(d) [Augmentation and correction of the record]** Augmentation or correction of the record shall be done under rule 12. Preparation of a supplemental transcript pursuant to an order under this subdivision shall be given highest priority. The procedures described in subdivision (c) shall be followed when applicable. Any request for augmentation by the appellant shall be filed within 15 days after counsel has received the record on appeal. Any request for augmentation by the respondent shall be filed within 15 days after the filing of appellant's opening brief. If available, the request for augmentation shall include copies of requested documents to be added to the record.~~

~~**(e) [Appellate procedure]** The judges and clerks of the superior and reviewing courts shall adopt procedures to identify clearly the record and expedite all processing of a case to which this rule applies. The clerks of the courts shall provide data required to assist the Judicial Council in evaluating the effectiveness of this rule.~~

~~**(f) [Briefs]** To permit determination within 250 days of the filing of the notice of appeal, the appellant's opening brief shall be served and filed within 30 days after the filing of the record in the reviewing court. The respondent's brief shall be served and filed within 30 days after the filing of the appellant's opening brief. The minor's opening brief shall be served and filed within 10 days after filing of the respondent's brief, and appellant's reply brief, if any, shall be served and filed within 20 days after filing of the respondent's brief. Briefs shall conform to rule 37(b).~~

~~*(Subd (f) amended effective January 1, 1994.)*~~

~~**(g) [Argument and submission]** Oral argument shall be held no later than 60 days after the appellant's reply brief is filed or is due to be filed. If oral argument is waived, the case shall be deemed submitted as of the sixtieth day after the appellant's reply brief is filed.~~

~~**(h) [Extensions of time]** Only the reviewing court may grant extensions of time to prepare the record or to serve and file briefs. The court shall require an exceptional showing of good cause before granting any extension. The trial court shall not grant any extensions of time.~~

~~**(i) [Expiration of this rule]** Subdivision repealed effective January 1, l995.~~

~~*(Subd (i) repealed effective January 1, 1995; previously amended effective January 1, 1993, January 1, 1994.)*~~

Rule 39.2A repealed effective January 1, 2005; adopted effective March 1, 1992; previously amended effective January 1, 1993, January 1, 1994, and January 1, 1995. The repealed rule related to experimental project for Imperial County and San Diego County juvenile appeals.

Drafter's Notes

1994 These amendments (to rules 39.1, 39.1A, 39.2, 39.2A) establish a pilot project statewide to specify procedures for expediting appeals from judgments freeing children from parental custody and control.

1995 The council also amended rules 39.2 and 39.2A to continue the pilot projects on dependency appeals . . . .

In accordance with the legislative mandate, the council adopted rules 39.1B and 1436.5 and amended rules 39.1A, 39.2, 39.2A, 1435, 1436, 1456, 1460, 1461, and 1462 to specify procedures, including filing and record requirements, for appellate review of these orders. The rules provide that the findings and orders setting a hearing under section 366.26 may be reviewed on appeal following the order of the 366.26 hearing only if the following have occurred:

(1) an extraordinary writ was sought by the timely filing of Judicial Council form Writ Petition-Juvenile (JV-825) or other petition for extraordinary writ; and

(2) the petition for extraordinary writ was summarily denied or otherwise not decided on the merits.

Review on appeal of the order setting a hearing under section 366.26 is limited to issues raised in a previous petition for extraordinary writ that were supported by an adequate record. Under the new procedures, if the party wishes to preserve any right to review on appeal of the order setting the hearing under section 366.26, the party is required to seek an extraordinary writ by filing a new form, Notice of Intent to File Writ Petition and Request for Record (JV-820), or other notice of intent to file a writ petition and request for record.

To ensure that all participants in juvenile dependency proceedings receive timely notice of the new legislation and procedures, the Judicial Council is requiring that juvenile courts post the new rules in a conspicuous place.

The council recognizes that there may be unforeseen difficulties in implementing the new legislation and writ rules since an expedited process is required and some trial counsel may be unfamiliar with writ procedures. Therefore the council is requesting that judges and clerks of the trial and reviewing courts report to the council on a quarterly basis to assist in evaluating the effectiveness of the rule changes. Further, the council has directed staff to monitor implementation of the new procedures to discern any problems or issues in order to make recommendations for timely rule revisions and report to the council.

Rule 39.4. Special rules for conservatorship appeals

(a) [General provision] The rules governing appeals from the superior court in criminal cases are applicable to any appeals from a judgment or order pursuant to Welfare and Institutions Code section 5350, except where otherwise expressly provided by this rule.

(b) [Contents of record on appeal-normal record] The record on appeal shall include the following (which shall constitute the normal record):

(1) A clerk's transcript containing copies of the notice of appeal, any request for additional record and any order made pursuant to it, the petition, any demurrer or written motions with supporting and opposing memoranda and affidavits, any medical reports filed, any motion for a new trial with supporting and opposing memoranda and affidavits, all minutes of the court relating to the action, the verdict, the judgment or order appealed from, written instructions given or refused indicating on each instruction the party requesting it, and all reports of the social workers which have been filed.

(2) A reporter's transcript of all oral proceedings taken, except voir dire examination of jurors and opening statements of counsel.

(3) To be transmitted as originals upon request by the reviewing court as provided in rule 10: any exhibit admitted in evidence or rejected.

(c) [Transmission] A copy of the record shall be transmitted to the parties; however, the record shall not be transmitted to the district attorney or the Attorney General unless that office represents a party.

(d) [Briefs] Briefs shall be served on the parties; however, briefs shall not be served on the district attorney or the Attorney General unless that office represents a party.

(e) [Service] Notwithstanding rule 44(b)(2)(ii), proof of delivery of five copies to the Supreme Court shall not be required.

(Subd (e) amended effective January 1, 1995.)

Rule 39.4 repealed effective January 1, 2005; adopted effective July 1, 1987; previously amended effective January 1, 1995. The repealed rule related to special rules for conservatorship appeals.

Drafter's Notes

1987 The council adopted new rule 39.4, which defines the record on appeal in a conservatorship matter under Welfare and Institutions Code section 5350 (Lanterman-Petris-Short Act), and states special rules applicable to those appeals.

1995 The council also . . . amended rules 39.1 and 39.4 (special rules for dependency and conservatorship appeals) to conform to rule 44 by requiring that five rather than seven copies of each Court of Appeal brief be filed with the California Supreme Court.

Rule 39.8. Appeals in sterilization cases

(a) [Applicability] This rule applies to appeals from judgments or orders authorizing the appointment of a limited conservator to consent to sterilization of a developmentally disabled adult conservatee.

(b) [Rules in criminal appeals apply] The rules governing appeals from the superior court in criminal cases are applicable to appeals in sterilization cases unless otherwise expressly provided in this rule or unless the application of a criminal rule would be clearly impracticable or inappropriate.

(c) [When appeal is deemed taken] Entry of a judgment or order authorizing consent to sterilization has the effect of a notice of appeal. The clerk shall forthwith prepare the clerk's transcript and notify the reporter to prepare the reporter's transcript.

(d) [Notification by clerk] The clerk of the superior court shall, forthwith upon entry of the judgment or order, mail certified copies to the clerk of the Court of Appeal for the district and to the Attorney General.

(e) [Contents of record] The normal record on appeal shall include the following:

(1) A clerk's transcript containing copies of all papers or records filed with the court, including

(i) the petition and the notice of hearing on the petition;

(ii) each application, motion, and notice of motion, with supporting and opposing memoranda and affidavits;

(iii) each report filed or lodged with the court;

(iv) each transcript of a proceeding pertaining to the case;

(v) minutes of the court relating to the case;

(vi) the written statement of decision and findings of the court;

(viii)the judgment or order appealed from.

(2) A reporter's transcript containing all proceedings in the superior court pertaining to the case, including

(i) all proceedings at the hearing on the petition, with opening statements and closing arguments;

(ii) all proceedings on motions;

(iii) all comments on the evidence by the court and any oral opinion or statement of decision by the court.

(3) All exhibits admitted in evidence or rejected.

Additional items may be requested, following the procedure stated in rule 33(b).

An original and two copies of each transcript shall be prepared. The transcript shall be corrected, certified, and transmitted as provided by rule 35.

The cost of preparing the record on appeal shall be as provided by Probate Code section 1963.

(f) [Confidential material] Written reports of physicians, psychologists, and clinical social workers and other matter designated as confidential by the trial court included in the record on appeal may be inspected only by court personnel, the parties to the proceeding and their attorneys, and other persons designated by the court. These reports and other confidential matter shall be transmitted to the clerk of the reviewing court in a sealed envelope marked "Confidential – May Not Be Examined Without Court Order."

(g) [Duty of trial counsel] To expedite certification of the record on appeal, trial counsel for the conservatee shall continue to represent the conservatee until the record is certified. Trial counsel shall check that the record on appeal has been prepared and shall check for errors or omissions in that record and request any corrections within the time provided by rule 35. After certification, trial counsel shall deliver the transcripts to appellate counsel. Appellate counsel for the conservatee may request additions or corrections to the record on appeal in either the trial court or the appellate court.

(h) [Appointment of appellate counsel] Upon appeal from a judgment or order authorizing consent to sterilization, the appellate court shall appoint counsel to represent on appeal the conservatee if no legal counsel on appeal has been retained for the conservatee.

Rule 39.8 repealed effective January 1, 2005; adopted effective January 1, 1987. The repealed rule related to appeals in sterilization cases.

Drafter's Notes

1987—The Judicial Council of California has adopted new rule 39.8, effective January 1, 1987, that governs notice of and procedure for automatic appeal from a judgment or order appointing a

limited conservator authorized to consent to the sterilization of a developmentally disabled adult, to meet the requirements of recent legislation (Stats. 1986, ch. 1012).

The new rule resulted from a proposed draft rule that was widely circulated for comment to interested groups and individuals.

The rule is patterned after provisions governing appeals from the juvenile court and automatic appeal from a judgment imposing the penalty of death. Entry of the judgment or order has the effect of a notice of appeal. The rule reflects statutory requirements for confidentiality of specified reports and other matter designated confidential by the trial court. To expedite certification of the record, trial counsel for the conservatee shall continue to represent the conservatee until the record is certified. After certification, trial counsel shall deliver the transcripts to appellate counsel. Upon appeal, the appellate court shall appoint appellate counsel if no legal counsel on appeal has been retained for the conservatee.

PART VII. General Provisions

Rule 40. Definitions

In these rules, unless the context or subject matter otherwise requires:

(a) The past, present and future tenses shall each include the other; the masculine, feminine and neuter gender shall each include the other; and the singular and plural number shall each include the other.

(b) The words "superior court" mean the court from which an appeal is taken pursuant to these rules; the words "reviewing court" apply to the court in which an appeal or original proceeding is pending, and mean the Supreme Court or the Court of Appeal to which an appeal is taken, or to which an appeal or an original proceeding is transferred, or in which an original proceeding is commenced.

(c) The party appealing is known as the "appellant," and the adverse party as the "respondent."

(d) The word "shall" is mandatory and the word "may" is permissive.

(e) The terms "party," "appellant," "respondent," "petitioner" or other designation of a party include such party's attorney of record. Whenever under these rules a notice is required to be given to or served on a party such notice or service shall be made on his attorney of record, if he has one.

(f) The words "serve and file" mean that a document filed in a court is to be accompanied by proof of prior service, in a manner permitted by law, of one copy of the document on counsel for each party who is represented by separate counsel and on each party appearing in person. The proof of service shall name each party represented by each attorney served. (Subd (f) amended effective January 1, 1998.)

(g) "Judgment" includes any judgment, order or decree from which an appeal lies.

(h) The words "Chief Justice" include the acting Chief Justice, and the words "Presiding Justice" include the acting Presiding Justice.

(i) The word "briefs" includes petitions for rehearing, petitions for review, and answers thereto. It does not include petitions for extraordinary relief in original proceedings.

(Subd (i) relettered effective January 1, 2002; adopted as subd (k) effective January 1, 1951; previously amended effective July 1, 1989, and July 1, 1991.)

(j) "Register" and "register of actions" means the permanent record of cases maintained by electronic, magnetic, microphotographic, or similar means.

(Subd (j) relettered effective January 1,2002; adopted as subd (m) effective July 1, 1989.)

(k) "Date of filing" of a brief (as defined in subdivision (i)) is the date of delivery to the clerk's office during normal business hours. The brief is timely, however, if the time for its filing had not expired on the date of its mailing by certified or express mail as shown on the postal receipt or postmark, or the date of its delivery to a common carrier promising overnight delivery as shown on the carrier's receipt.

(Subd (k) amended effective January 1, 2003; adopted as subd (n) effective July 1, 1989; previously amended effective July 1, 1991 and January 1, 2002.)

(l) The word "recycled" as applied to paper means "recycled paper product" as defined by section 42202 of the Public Resources Code. Whenever the use of recycled paper is required by these rules, the attorney, party, or other person filing or serving a document certifies, by the act of filing or service, that the document was produced on paper purchased as recycled paper as defined by that section.

(Subd (l) relettered effective January 1, 2002; adopted as subd (o) effective January 1, 1994.)

Rule 40 repealed effective January 1, 2005; previously amended effective January 1, 1983, July 1, 1989, July 1, 1991, January 1, 1994, July 1, 1996, January 1, 1998, January 1, 2002, and January 1, 2003. The repealed rule related to definitions.

Drafter's Notes

1983 See note following rule 15.

1989 Rule 40 was amended to define "register" to include the permanent record kept by electronic or similar means, to conform to Court of Appeal computerization of their dockets.

New subdivision (n) of rule 40 defines "date of filing" of a brief to include date of mailing via certified or express mail or delivery to an overnight delivery common carrier. Subdivision (k), which defines "brief," was technically amended to include petitions for "review" rather than obsolete petitions for "hearing."

1991 The council amended rule 40(n) to state that a document sent by an approved method on or before the day it was due is timely. The council also amended 40(k) (definition of a brief) to memorialize that the 40(n) (overnight delivery service) provision does not apply to petitions for original writs.

1994 New and amended California Rules of Court (new rules 989.1, 1071.5; amended rules 9, 40, 44, 201, 501) require the use of recycled paper for original papers filed in California courts after January 1, 1995, and for copies after January 1, 1996. The rules provide that an attorney, by the act of filing the document, certifies that recycled paper was used.

1996 Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were amended concerning typography and length of briefs and accompanying explanatory matter, and page limits adjustments.

1998 Subdivision (f) was amended to require that all documents and briefs filed in an appeal be served on all parties, and that proofs of service include the name of each party represented by each attorney served.

2002 See note following rule 1.

Rule 40.5. Service and filing of notice of change of address

(a) [Service and filing of notice] An attorney or unrepresented party whose address or telephone number changes while an appeal, original proceeding, or petition is pending before a reviewing court shall serve and file written notice of the change of address or telephone number. The notice shall specify the case number or numbers to which it applies. In the case of attorneys, the notice shall include the attorney's California State Bar membership number.

(b) [Notice applies to all pending and past matters unless otherwise stated] When an attorney files a notice of change of address or telephone number in connection with any pending appeal, original proceeding, or petition, the clerk of the reviewing court is authorized to use the new address and telephone number in attempting to communicate with the attorney in connection with all other matters pending before the court at the time the notice was filed, and in connection with any matter that was concluded prior to the filing, unless the attorney advises the clerk otherwise in writing.

(c) [Appearance not conforming to address on record] If a proposed appearance in a new matter shows an attorney's address different from the attorney's address of record in the court, the clerk shall enter the appearance subject to its being stricken if, after inquiry by the court, the attorney does not promptly confirm the address or file and serve a change of address.

Attorneys with two or more offices may have a corresponding number of addresses of record with a reviewing court, but only one address may be associated with a given case or proceeding.

Rule 40.5 repealed effective January 1, 2005; adopted effective January 1, 1994. The repealed rule related to service and filing of notice of change of address.

Drafter's Notes

1993 Rule 40.5 is adopted to require filing and service of changes of address.

Rule 41. Motions in the reviewing court

(a) [Motion and opposition] Except as otherwise provided in these rules, all motions in a reviewing court shall be made by the filing of a typewritten motion, with proof of service on all other parties, stating the grounds of the motion, the papers, if any, on which it is based, and the order or other relief requested. Each copy of the motion shall be accompanied by a memorandum of points and authorities, and if the motion is based on matters not appearing of record, by affidavits or other evidence in support thereof. Any showing in opposition to the motion shall be served and filed within 10 days after the service of the motion.

(Subd (a) amended effective January 1, 1973; previously amended effective January 1, 1951, January 2, 1962, January 1, 1967, and January 1, 1970.)

(b) [Disposition of motion] Motions may be disposed of after opposition thereto has been filed or the time for filing such opposition has expired. Upon request of a party or upon its own motion, the reviewing court may place any motion on the calendar for hearing or the court may otherwise dispose of the motion as it may determine. When a motion has been placed on the calendar for hearing, the clerk shall mail to each party a notice thereof showing the date and time designated for the hearing. All motions shall be deemed to be made on all the grounds stated therein.

(Subd (b) amended effective January 1, 1973.)

(c) [Failure to oppose motion] Failure of an appellant to file a written opposition to a motion to dismiss an appeal or to appear and opose the motion after notification by the clerk of a hearing thereon may be deemed an abandonment of the appeal authorizing its dismissal. Failure of the adverse party to serve and file written opposition to any other motion may be deemed a consent to the granting of such motion.

(Subd (c) amended effective January 1, 1973.)

Rule 41 repealed effective January 1, 2005. The repealed rule related to motions in the reviewing court.

Rule 42. Showing on motion made prior to filing record

(a) [Motion to dismiss appeal] When a motion to dismiss an appeal is filed prior to the filing of the record on appeal in the reviewing court, it shall be accompanied by a certificate of the clerk of the superior court or an affidavit setting forth the following:

(1) The nature of the action and the relief demanded by the complaint and any cross-complaint or complaint in intervention.

(2) The names of all attorneys of record.

(3) A description of the judgment, the date of its entry, and the fact and date of service of written notice of its entry.

(4) The fact and date of filing of notice of intention to move for a new trial, or the absence of such filing.

(5) The disposition of proceedings on motion for new trial, the date of such disposition, and the date of service of written notice thereof.

(6) The fact and date of filing of notice to appeal, and the court to which the appeal was taken.

(7) The fact and date of filing

(a) any notice to prepare a transcript or notice designating papers, records or exhibits;

(b) any stipulation to prepare an agreed statement, or notice of intention to propose a settled statement;

(c) any proposed narrative statement; and

(d) any order extending the time for preparation of the record.

(8) The date of certification of the record, or the facts relating to failure to certify, or the fact that no proceeding for the preparation of a record on appeal is pending in the superior court, and that the time to institute any such proceeding has expired.

(Subd (a) amended effective July 1, 1985; previously amended effective January 1, 1973.)

(b) [Other motions] When any other motion is filed prior to the filing of the record on appeal in the reviewing court, it shall be accompanied by such affidavits or other evidence as may be necessary or proper to support the motion.

(Subd (b) amended effective July 1, 1980; previously amended effective January 1, 1973.)

(Subd (c) repealed effective July 1, 1980.)

Rule 42 repealed effective January 1, 2005; previously amended effective July 1, 1985. The repealed rule related to showing on motion made prior to filing record.

Drafter's Notes

1985 Rule 42 was amended to permit, at counsel's option, use of an affidavit as to facts supporting a motion to dismiss an appeal rather than a clerk's certificate.

Rule 43. Applications on routine matters

Except as otherwise provided in these rules, applications to extend time for filing records and briefs, applications to shorten time, and applications relating to other matters of routine shall be served and filed; but the Chief Justice or presiding justice may require an additional showing to be made and for good cause may excuse advance service. The application shall set forth facts showing:

(1) good cause for granting the application, and

(2) any previous applications granted or denied to any party after filing of the notice of appeal.

The application may be granted or denied by the Chief Justice or presiding justice, unless the court otherwise determines. The applicant shall provide to the clerk addressed, sufficient postage prepaid envelopes for mailing the order granting or denying the application to all parties.

Rule 43 repealed effective January 1, 2005; previously amended effective January 1, 1974, January 1, 1975, and July 1, 1995. The repealed rule related to applications on routine matters.

Drafter's Notes

1995 On the recommendation of the Appellate Standing Advisory Committee, the council amended: . . . (5) rule 43 to require service of routine applications unless excused for good cause, as proposed.

Rule 44. Form and filing of papers

(a) Form

Except as otherwise provided in these rules, all papers filed in a reviewing court may be either produced on a computer or typewritten and must comply with the relevant provisions of rule 14(b). All copies of papers must be clear and legible. The use of recycled paper is required for all papers filed with the court or served on the parties. The use of recycled paper for the cover of the brief is encouraged.

(Subd (a) amended effective January 1, 2004; previously amended January 1, 1959, July 1, 1974, January 1, 1993, January 1, 1994, January 1, 1995, and July 1, 1996.)

(b) Number of copies

If a brief, paper, or document, other than the record, is filed in a reviewing court the following number of copies must be filed:

(1) If filed in the Supreme Court:

(A) An original and 13 copies of a petition for review, an answer, or a reply;

(B) An original and 13 copies of a brief in a cause pending in that court;

(C) An original and 10 copies of a petition for a writ within the court's original jurisdiction or an opposition or other response to the petition;

(D) An original and 8 copies of a notice of motion, motion, or opposition or other response to a motion;

(E) An original and 8 copies of a federal exhaustion petition for review, an answer, or a reply; and

(F) An original and one copy of any other document or paper.

(2) If filed in a Court of Appeal:

(A) An original and 4 copies of a petition or an answer, opposition, or other response to a petition.;

(B) An original and 4 copies of a brief and, in civil appeals, proof of delivery of 5 copies to the Supreme Court;

(C) An original and 3 copies of a notice of motion, motion, or opposition or other response to a motion; and

(D) An original and one copy of any other document or paper.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1951, January 2, 1962, November 11, 1966, January 1, 1972, July 1, 1973, May 6, 1985, July 1, 1989, and January 1, 1996, and July 1, 1996.)

(c) Covers

So far as practicable, the covers of briefs and petitions should be in the following colors:

Appellant's opening brief (rule 13(a)) ..... green

Respondent's brief (rule 13(a)) ..... yellow

~~Appellant's reply brief (rule 13(a)) ..... tan~~

~~Amicus curiae brief ..... gray~~

~~Petition for rehearing ..... orange~~

~~Answers to petition for rehearing ..... blue~~

~~Petition for original writ or answer (opposition) to writ petition ..... Red~~

~~Petition for review (rule 28(a)) ..... white~~

~~Answer to petition for review (rule 28(a)) ..... blue~~

~~Reply to answer (rule 28(a)) ..... white~~

~~Petitioner's brief on the merits (rule 29.1(a) ..... white~~

~~Answer brief on the merits (rule 29.1(a)) ..... blue~~

~~Reply brief on the merits (rule 29.1(a))..... white~~

~~A brief or petition not conforming to this subdivision must be accepted for filing; but in the case of repeated violations by an attorney or party, the court may proceed as provided in rule 14(e).~~

~~*(Subd (c) amended effective January 1, 2004; adopted effective January 1, 1984; previously amended effective May 6, 1985.*~~

~~**(d) Attorneys' names, addresses, telephone numbers, State Bar numbers**~~

~~Every brief and other paper filed in a reviewing court must contain on the cover, or on the first page if there is no cover, the name, address, and telephone number of the attorney filing the paper, and the California State Bar membership number of that attorney and of every attorney who joins in the brief or paper. California State Bar membership numbers of the supervisors in a law firm or public law office of the attorney responsible for the case need not be stated.~~

~~*(Subd (d) amended effective January 1, 2004; adopted effective August 1, 1993.)*~~

Rule 44 repealed effective January 1, 2005; previously amended effective January 1, 1984, May 6, 1985, July 1, 1987, January 1, 1993, August 1, 1993, January 1, 1994, January 1, 1996, July 1, 1996, and January 1, 2004. The repealed rule related to form and filing of papers.

Drafter's Notes

1983 Rule 44 was amended to specify the color of covers of briefs, writ petitions and similar documents. The specification of colors had previously appeared in an appendix to the California Rules of Court.

1989 Rule 44(b) was amended to adjust in light of current court needs the number of copies of briefs required to be filed (reducing some and increasing others slightly).

January 1993 The council adopted amendments to rules 9, 15, 44, 201, and 501 of the California Rules of Court, effective January 1, 1993, to: (1) expressly permit and encourage litigation documents, reporter's transcripts, and records on appeal to be on recycled paper, and (2) allow the use of unbleached paper.

August 1993 The Judicial Council of California has amended rules 15, 44, and 56 of the California Rules of Court to require that attorneys' California State Bar membership numbers appear on all appellate filings. The amendments were effective August 1, 1993, but court clerks are required to give attorneys an opportunity to correct papers filed without the bar number.

These amendments conform appellate practice to the requirement that California State Bar membership numbers appear on trial court filings. (Rules 201 and 501 amended effective July 1, 1993.)

1994 New and amended California Rules of Court (new rules 989.1, 1071.5; amended rules 9, 40, 44, 201, 501) require the use of recycled paper for original papers filed in California courts after January 1, 1995, and for copies after January 1, 1996. The rules provide that an attorney, by the act of filing the document, certifies that recycled paper was used.

July 1996 Rules 15, 28(e)(6), 29.3(a), (c), 37, 40, and 44(a) . . . These rules were amended concerning typography and length of briefs and accompanying explanatory matter, and page limits adjustments.

Parties who file briefs with the Supreme Court or in a civil case with the Courts of Appeal will no longer be required to also file a copy with the Supreme Court on computer disk, under an amendment to California Rules of Court, rule 44. The amendment, adopted by the Judicial Council of California, takes effect July 1, 1996, and returns the rule to its pre-January 1, 1996, form.

Rule 45. Extension and shortening of time

(a) [Computation of time] The time for doing any act required or permitted under these rules shall be computed and extended in the manner provided by the Code of Civil Procedure.

(b) [Extension by superior court prohibited] Judges of the superior court shall not extend the time for doing any act involved in the preparation of the record on appeal. Those times may be extended as provided in subdivision (c).

(Subd (b) amended effective July 1, 1989; previously amended effective January 1, 1974, and January 1, 1976.)

(c) [Extension of time] The time for filing a notice of appeal, filing a petition for Supreme Court review of a Court of Appeal decision or the granting or denial of a rehearing in the Court of Appeal shall not be extended. The time for the granting or denial of Supreme Court review of a decision of a Court of Appeal shall only be extended as provided in subdivision (a) of rule 28. The time for the granting or denial of a rehearing in the Supreme Court shall only be extended as provided in subdivision (a) of rule 24. The time for ordering a case transferred from the superior court to the Court of Appeal as provided in rule 62 shall not be extended, and the time for a superior court to certify the transfer of a case to the Court of Appeal shall not be extended except as provided in subdivision (d) of rule 63. The Chief Justice or presiding justice, for good cause shown, may extend the time for doing any other act required or permitted under these rules. The Chief Justice or presiding justice may relieve a party from a default for failure to file a timely petition for review or rehearing if the time within which the court could order review or rehearing on its own motion has not expired. An application for extension of time shall be made as provided in rule 43.

(Subd (c) amended effective May 6, 1985 previously amended January 1, 1951, January 1, 1957, January 1, 1961, January 2, 1962, November 11, 1966, and January 1, 1979.)

(d) [Shortening time] The Chief Justice or Presiding Justice, for good cause shown, may shorten the time for serving or filing a notice of motion or other paper incident to an appeal or an original proceeding in the reviewing court. An application to shorten time shall be made as provided in rule 43.

(e) [Relief from default] The reviewing court for good cause may relieve a party from a default occasioned by any failure to comply with these rules, except the failure to give timely notice of appeal. This rule is applicable to any order granting relief from default made after January 1, 1962.

(f) [Notification to client] Counsel in civil cases must mail or otherwise deliver to the party represented a copy of each stipulation or application for additional time for a step in the preparation of the record or for filing briefs, and attach evidence of doing so to the application or stipulation or certify in the stipulation or application that they have done so. In class actions, delivering a copy to one represented party is adequate. The evidence or certification of mailing or other delivery need not state the address of any party to whom copies were sent.

(Subd (f) amended effective January 1, 2003; adopted effective July 1, 1990.)

Rule 45 repealed effective January 1, 2005; adopted effective July 1, 1943; previously amended effective January 1, 1951, January 1, 1957, January 1, 1961, January 2, 1962,

November 11, 1966, January 1, 1974, January 1, 1976, January 1, 1979, May 6, 1985, July 1, 1989, July 1, 1990, and January 1, 2003. The repealed rule related to extension and shortening of time.

~~Advisory Committee Comment~~

~~Extensions of time for petitions for hearing under former rule 28 were acceptable because the time within which the Supreme Court could order hearing ran from finality in the Court of Appeal; the extension did not affect that time. As rule 28 is amended effective May 6, 1985, time for the Supreme Court to act runs from the filing of the petition. An extension of that time would extend the time for the Supreme Court to act. Rule 45(c) is therefore amended to prohibit those extensions, and restrict grants of relief from default, assuring a clear time limit on the Supreme Court's jurisdiction to grant review.~~

~~Drafter's Notes~~

~~1989~~ ~~Rule 45(b) was amended to take away trial court authority to grant extensions for any step in the appellate process in civil appeals, conforming them to criminal appeals.~~

~~1990~~ ~~The council amended rule 45 to require counsel in civil appeals to give their clients copies of stipulations and applications to the court for additional time, and to attach evidence of having done so to the application or stipulation.~~

~~Rule 45.1. Appellate emergencies~~

~~When earthquake, fire, or other public calamity, or the danger thereof, or the destruction of or danger to the building housing an appellate court, renders it necessary, the Chairperson of the Judicial Council may, notwithstanding any provision of rules 1 through 191, order that:~~

~~(1) No more than 14 days in addition to the time allowed by the rules shall be allowed for doing any act related to commencing, pursuing, or deciding any proceeding in any reviewing court; or~~

~~(2) No more than 14 days shall be excluded from any computation of the time allowed for doing any act related to commencing, pursuing, or deciding any proceeding in any reviewing court; or~~

~~(3) Specified courts may, to the extent and for the period stated in the order, allow extensions of time of up to 30 days that would not otherwise be authorized by the rules, upon a showing of facts of a type specified in the order.~~

~~The order shall specify whether it applies throughout the state, applies only to specified courts, applies to courts within specified geographic areas, or applies to attorneys within specified geographic areas, or shall otherwise specify the applicability of the order.~~

~~If the nature and extent of the public calamity make it necessary, the Chairperson of the Judicial Council may extend or renew an order issued under this rule for an additional~~

period of not more than 14 days for an order under paragraph (1) or (2), or an additional period of not more than 30 days for an order under paragraph (3).

Rule 45.1 repealed effective January 1, 2005; adopted effective January 1, 1995. The repealed rule related to appellate emergencies.

Drafter's Notes

1995 On the recommendation of the Appellate Standing Advisory Committee, the council: . . . (5) adopted new rule 45.1 to give the Chief Justice power to make limited modifications to appellate time deadlines by order in case of emergencies such as earthquakes.

Rule 45.5. Standards for time extensions

(a) [Policy on time extensions] The policy of this state is that the times provided by the rules of court should generally be met so that appellate business is conducted expeditiously and public confidence in efficient administration of justice at the appellate level is maintained. California's policy is also that litigants are entitled to have the effective assistance of counsel, and that adequate time must be allowed for counsel to properly represent their clients.

It is recognized that, for a variety of legitimate reasons, counsel may not always be able to prepare briefs or other documents within normal rule times. Preparing briefs or other documents which fully advance the parties' interests, and are accurate, clear, concise, and complete so they assist the courts, requires adequate time. When good cause appears, an extension of time shall therefore be granted.

As a means of balancing these competing policies, applications to extend time in the Supreme Court and Courts of Appeal shall demonstrate good cause pursuant to the standards stated in this rule.

(b) [Declaration stating facts] An application to extend time shall be made by a declaration containing specific facts, not mere conclusions, and shall be served on all parties to the appellate proceeding. The application shall state when the document is due, how long an extension is requested, and whether any prior extensions have been granted and, if so, their length, and whether granted by stipulation or by the court.

(c) Factors considered] In determining good cause, the court shall consider the following factors, if applicable:

(1) The degree of prejudice, if any, to any party, including a description of the judgment or order from which appeal is taken, in sufficient detail to enable the court to determine whether there would be significant prejudice to any litigant from grant or denial of extension.

~~(2) In civil cases, the position of the client and any opponent concerning the extension being sought.~~

~~(3) The number and complexity of the issues raised, including a description of those issues, and the length of the record, which must be described, including the number of relevant trial exhibits. A record containing one volume of clerk's transcript and two volumes of reporter's transcripts is considered an average-length record.~~

~~(4) Settlement negotiations, including how far they have progressed and when they will be completed.~~

~~(5) Whether the case in which the application is made involves litigation entitled to priority.~~

~~(6) Whether counsel handling the appeal is new to the case, or the necessity for other counsel or the client to review the document to be filed.~~

~~(7) Whether the counsel responsible for preparing the document has other time-limited commitments during the affected period. Mere conclusory statements that more time is needed because of the press of other business will not suffice. Good cause may be established by a specific showing of other obligations (i) involving deadlines which as a practical matter preclude filing the document by the due date without impairing quality, or (ii) which are in cases entitled to priority.~~

~~(8) Illness of counsel, a personal emergency, or a planned vacation which cannot reasonably be rearranged and which was not reasonably expected to conflict with the due date.~~

~~(9) Any other factor which in the context of a particular case constitutes good cause.~~

Rule 45.5 repealed effective January 1, 2005; adopted effective July 1, 1989. The repealed rule related to standards for time extensions.

~~Drafter's Notes~~

~~1989~~ ~~Rule 45.5 was adopted to help define good cause for extensions in briefing time.~~

~~Rule 46. Papers violating rules not to be filed~~

~~No record, brief, or other paper or document which fails to conform to the requirements of these rules shall be filed by the clerk of the reviewing court.~~

Rule 46 repealed effective January 1, 2005. The repealed rule related to papers violating rules not to be filed.

~~Rule 46.5. Sanctions to compel compliance~~

After the filing of a notice of appeal, the failure of any court reporter or clerk to perform a duty imposed on him by statute or these rules which delays the filing of the record on appeal is an unlawful interference with the proceedings of the reviewing court and may be treated as such in addition to or in lieu of any other sanction imposed by law for the same breach of duty.

This rule does not limit the reviewing court's power over other persons not enumerated, nor does it limit the nature of acts which may, under appropriate circumstances, constitute unlawful interference with the reviewing court's proceedings.

Rule 46.5 repealed effective January 1, 2005; adopted effective January 1, 1976. The repealed rule related to sanctions to compel compliance.

Rule 47. Courts of Appeal with more than one division

(a) Assignment of appealed cases] Appeals taken directly to a Court of Appeal having more than one division, or transferred to such a court by orders which do not designate the division to which they are transferred, may, on such transfer or on receipt of a copy of the notice of appeal or other notification of its filing, be assigned to the divisions of the court in a manner that will equalize the distribution of business among them. These assignments shall be made by the presiding justices successively for periods of one year unless a majority of the judges of the court in the district shall otherwise determine.

(Subd (a) amended effective July 1, 1989; previously amended effective November 11, 1966.)

(b) Assignment of original proceedings, certifications for transfer, motions and applications] Original proceedings, certifications for transfer of cases on appeal within the original jurisdiction of municipal or justice courts, and motions and applications relating to causes not yet assigned to a particular division of such a court, shall be assigned as a majority of the judges of the court in the district shall determine.

(Subd (b) amended effective November 11, 1966; previously amended effective January 1, 1959, and January 2, 1962.)

(c) [Clerk's records] The clerk of each Court of Appeal having more than one division shall keep records showing the divisions in which causes and proceedings are pending.

(Subd (c) amended effective November 11, 1966.)

Rule 47 repealed effective January 1, 2005; amended effective July 1, 1989. The repealed rule related to Courts of Appeal with more than one division.

Drafter's Notes

1989 Rule 47 was amended to authorize case assignment to a division upon the Court of Appeal's receipt of a copy of the notice of appeal.

~~Rule 48. Substitution of parties and attorneys~~

~~**(a) [Parties]** Whenever a substitution of parties to a pending appeal is necessary, it shall be made by proper proceedings instituted for that purpose in the superior court. On suggestion thereof and the presentation of a certified copy of the order of substitution made by the superior court, a like order of substitution shall be made in the reviewing court.~~

~~**(b) [Attorneys]** Withdrawal or substitution of attorneys may be effected by serving and filing a stipulation in the reviewing court, signed by the party, the retiring attorney and any substituted attorney. In the absence of stipulation, withdrawal or substitution may be effected only by an order made pursuant to a motion in the reviewing court as provided in rules 41 and 42; provided, however, that unless otherwise ordered by the court, service of the motion need be made only on the party and the attorneys directly affected thereby. A notification of any such withdrawal or substitution shall be given by the clerk of the reviewing court to the clerk of the superior court, and substituted counsel shall forthwith give notice thereof to all parties.~~

~~*(Subd (b) amended effective January 1, 1973.)*~~

Rule 48 repealed effective January 1, 2005; previously amended effective January 1, 1973. The repealed rule related to substitution of parties and attorneys.

~~Rule 49. Writ of supersedeas~~

~~A petition for a writ of supersedeas shall bear the same title as the appeal, and shall be served and filed in the reviewing court in which the appeal is pending. The petition shall be verified, and shall contain a statement of the necessity for the writ and supporting points and authorities. If the record on appeal has not been filed with the reviewing court, the petition shall contain a copy of the judgment, the date of its entry, the fact and date of filing of the notice of appeal, and a statement of the subject matter of the appeal sufficient to advise the reviewing court of the question involved. A request for a temporary stay pending the granting or denial of the writ may be included in the petition, or may be made separately and, except when the custody of a minor is involved, without service on the respondent. The writ may be issued on any conditions which the reviewing court deems just, but a writ staying an order awarding or changing the custody of a minor shall not be granted without a hearing.~~

~~If the writ or stay issues, the reviewing court shall notify the trial court pursuant to rule 56(f).~~

~~A writ of supersedeas shall not issue until the respondent has had an opportunity to file points and authorities and a statement of any material facts in opposition. Unless otherwise ordered, the opposition may be filed within 15 days after filing of the petition and points and authorities supporting it. A temporary stay pending decision on the petition may be granted when appropriate.~~

Rule 49 repealed effective January 1, 2005; previously amended effective January 1, 1967, January 1, 1984, July 1, 1985, and January 1, 1991. The repealed rule related to writ of supersedeas.

Drafter's Notes

1983 See note following rule 32.

1985 Rule 49 was amended to prohibit any relief on a petition for a writ of supersedeas, other than a stay, until an opportunity for opposition is afforded.

Rule 49.5. Request for stay or writ of supersedeas

When a petition or other request for a stay or writ of supersedeas is bound with or included in the text of any petition for a writ, petition for hearing, or any other document, the cover shall bear the conspicuous notation "STAY REQUESTED" or words of like effect. If the notation does not appear on the cover, the reviewing court may decline to consider the request or petition for the stay.

Rule 49.5 repealed effective January 1, 2005; adopted effective July 1, 1983. The repealed rule related to request for stay or writ of supersedeas.

Drafter's Notes

1983 At the suggestion of a member of the Supreme Court, a new rule 49.5 has been added to require that any request for a stay be indicated on the cover of the document containing the request.

Rule 50. Appeals and hearings in habeas corpus matters

(a) [Appeal from superior court under Pen. C. §1506 or §1507] On an appeal from a final order of the superior court granting all or any part of the relief sought, made upon the return of a writ of habeas corpus, as provided in section 1506 or 1507 of the Penal Code, the record on appeal shall include copies of:

(1) The notice of appeal;

(2) the petition for the writ;

(3) the return and all other papers and exhibits considered by the court on the hearing;

(4) a transcript of the oral evidence, if any, taken on the hearing; and

(5) the final order of the court.

The time and manner of taking such an appeal, and the rules governing the preparation of the record, the briefs, argument and hearing and determination thereof, shall be the same as those prescribed for criminal appeals.

(b) [Petition for review under Penal Code, §1506 or §1507] A petition for a review in the Supreme Court, after decision by a Court of Appeal in a habeas corpus proceeding, pursuant to section 1506 or 1507 of the Penal Code, shall comply with the rules governing petitions for review in criminal cases.

(Subd (b) amended effective July 1, 1989.)

Rule 50 repealed effective January 1, 2005; previously amended effective January 1, 1959, January 1, 1961, November 11, 1966, and July 1, 1989. The repealed rule related to appeals and hearings in habeas corpus matters.

Drafter's Notes

1989 Rule 50 was amended to change obsolete references to "hearing" in the Supreme Court to "review."

Rule 51. Substitute judge where trial judge unavailable

Whenever by these rules any act is required to be done by the judge who tried the case, and such judge is unavailable or unable to act at the time fixed therefor, the act shall be done by another judge of the same court in counties where there is more than one judge, such judge to be designated by the presiding judge, or if none, then by the senior judge, or if there is no judge of the superior court in the county available to act, then the act shall be done by a judge designated by the chairman of the Judicial Council.

Rule 51 repealed effective January 1, 2005; adopted effective July 1, 1943. The repealed rule related to substitute judge where trial judge unavailable.

Rule 52. Presumption where record not complete

If a record on appeal does not contain all of the papers, records and oral proceedings, but is certified by the judge or the clerk, or stipulated to by the parties, in accordance with these rules, it shall be presumed in the absence of proceedings for augmentation that it includes all matters material to a determination of the points on appeal. On an appeal on the judgment roll alone, or on a partial or complete clerk's transcript, the foregoing presumption shall not apply unless the error claimed by appellant appears on the face of the record.

Rule 52 repealed effective January 1, 2005; amended effective January 1, 1951. The repealed rule related to presumption where record not complete.

Rule 52.5. Effect of pretrial order

On an appeal on a record consisting solely of the complete or partial judgment roll and the pretrial order, the pretrial order may be considered only to the extent it affects the

~~definition or joinder of issues. On an appeal in which only portions of the oral proceedings are transcribed pursuant to subdivision (b) of rule 4 evidentiary material in the pre-trial order shall not be considered part of the record unless specifically designated by any of the parties for inclusion in the clerk's transcript.~~

Rule 52.5 repealed effective January 1, 2005; adopted effective January 1, 1961. The repealed rule related to effect of pretrial order.

~~Rule 53. Scope and construction of rules~~

~~These rules shall apply to appeals from superior courts and to original proceedings, motions, applications and petitions in the Supreme Court and Courts of Appeal. These rules shall also apply to the transfer and review of cases on appeal within the original jurisdiction of municipal or justice courts unless inconsistent with rules 61 to 69, and for the purpose of such application an appeal under these rules includes such a transfer. The rules shall be liberally construed to secure the just and speedy determination of appeals, transfers, and original proceedings.~~

Rule 53 repealed effective January 1, 2005; previously amended effective January 1, 1951, January 2, 1962, and November 11, 1966. The repealed rule related to scope and construction of rules.

~~Rule 54. Amendments to rules~~

~~These rules may be amended by the Judicial Council. Each amendment shall be published in the advance sheets of the Supreme Court decisions. An amendment shall become effective 60 days after its first publication unless the Judicial Council shall otherwise order, or the Judicial Council, prior to its effective date, shall withdraw it. Notice of the withdrawal of any proposed amendment to these rules shall be published in the advance sheets of the Supreme Court decisions prior to the date on which the proposed amendment would otherwise have become effective.~~

Rule 54 repealed effective January 1, 2005. The repealed rule related to amendments to rules.

~~Rule 54.5. Robes~~

~~The judicial robe required by section 68110 of the Government Code shall be black, shall extend in front and back from the collar and shoulders to below the knees, and shall have sleeves to the wrist. It shall conform to the style customarily worn in courts in the United States.~~

Rule 54.5 repealed effective January 1, 2005; adopted effective September 24, 1959. The repealed rule related to robes.

~~Rule 55. Preservation and destruction of records in Court of Appeal; minutes~~

~~(a) [Form in which records may be preserved]~~ ~~Appellate court records may be preserved in any form of communication or representation, including optical,~~

electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. If records are preserved in a form other than paper, the provisions of Government Code section 68150, subdivisions (b) through (d) and (f) (not including subdivision (f)(1)) through (h) shall apply.

(Subd (a) adopted effective July 1, 1997.)

(b) [Preservation and destruction of records] The clerk of a Court of Appeal shall keep as the permanent records of the court the minutes of the court and a register of appeals and original proceedings. The clerk shall preserve all other records of cases for 10 years after the decisions in the cases become final, and then the records may be destroyed as ordered by the administrative presiding justice, or the presiding justice in a Court of Appeal having only one division; except that in any criminal case in which the court affirms a judgment of conviction, the original reporter's transcript shall be retained for 20 years after the decision becomes final.

(Subd (a) as relettered effective July 1, 1997; amended and lettered effective July 1, 1989.)

(c) [Content of minutes] The minutes of a Court of Appeal shall record the significant public acts of the court and make it feasible for the public to follow the major events in the history of cases coming before the court. The minutes, therefore, shall include the following:

(1) Reference to opinions filed, showing whether each was published.

(2) Reference to orders granting rehearings, or modifying opinions, or denying rehearings.

(3) Reference to orders addressing the publication status of an opinion if issued after the opinion was filed.

(4) Summaries of all courtroom proceedings showing, at a minimum, the cases called for argument, the judges hearing argument in a division having more than three judges, and for each case the names of the attorneys who presented argument for each party and whether the cause was submitted at the close of argument or further briefing was requested.

(5) Orders vacating submission of causes, giving the reason for doing so and the date of resubmission.

(6) Orders correcting clerical and similar errors in published opinions, not requiring modification of the opinion.

(7) Orders dismissing appeals on motion or on the court's own motion for want of jurisdiction, unless the lack of jurisdiction is patent and uncontested.

(8) Orders consolidating cases.

(9) Orders affecting the judgment or its date of finality.

(10) Orders changing or correcting any of the above.

The minutes may at the direction of the court include other matter, such as the following:

(11) Assignments of judges by the Chief Justice.

(12) Reports of the Commission on Judicial Appointments confirming judges.

(13) Memorials.

(Subd (b) relettered effective July 1, 1997; adopted effective July 1, 1989.)

Rule 55 repealed effective January 1, 2005; adopted effective July 1, 1975; previously amended July 1, 1989, and July 1, 1997. The repealed rule related to preservation and destruction of records in Court of Appeal; minutes.

Former Rule

Former rule 55 was repealed effective July 1, 1963.

Drafter's Notes

1989 Rule 55 was amended to enumerate the minimum contents of minutes of Courts of Appeal. Their minutes are published in the California Official Reports advance sheets.

Rule 56. Original proceedings

(2002) **[Form and content of petition]** A petition to a reviewing court for a writ of mandate, certiorari, or prohibition, or for any other writ within its original jurisdiction, must be verified and shall set forth the matters required by law to support the petition, and also the following:

(2002) If the petition might lawfully have been made to a lower court in the first instance, it shall set forth the circumstances that, in the opinion of the petitioner, render it proper that the writ should issue originally from the reviewing court;

(2002) If any judge, court, board, or other officer or tribunal in the discharge of duties of a public character be named therein as respondent, the petition shall disclose the name of the real party in interest, if any, or the party whose interest would be directly affected by the proceeding; and

(2002) If the petition seeks review of trial court proceedings that are also the subject of a pending appeal, the title of the petition shall include the notation "Related Appeal Pending," and the first paragraph shall set forth:

(2002) The title, superior court docket number, and appellate court docket number, if any, of the pending appeal, and

(2002) If the petition is brought under Penal Code section 1238.5, the date of filing of the notice of appeal.

Except as otherwise provided in rules 56-60, a petition shall, insofar as practicable, comply with rule 15.

The cover of the petition shall contain the title of the case, the name, address, and telephone number of the attorney filing the petition, the name of the trial judge, and the number of the case in the trial court, if any. The cover shall also contain the California State Bar membership number of the attorney filing the petition and of every attorney who joins in the petition. California State Bar membership numbers of the supervisors in a law firm or public law office of the attorney responsible for the case need not be stated.

(Subd (a) amended effective July 1, 2000; previously amended effective July 1, 1976, July 1, 1980, and August 1, 1993.)

(2002) **[Points and authorities and service]** A petition for the issuance of such a writ shall be accompanied by points and authorities and by proof of service of both on the respondent and any real party in interest named in the petition. The proof of service shall name each party represented by each attorney served; a petition accompanied by a defective proof of service shall be filed, but if a proper proof of service is not filed within five days, the court may strike the petition or impose a lesser sanction. No statement in opposition to the petition is required unless requested by the court, but within five days after service and filing, the respondent or any real party in interest or both, separately or jointly, may serve and file points and authorities in opposition and a statement of any fact considered material not included in the petition. The court in its discretion (1) may allow the filing of the petition without service, and (2) may deny the petition or issue an alternative writ without first requesting the filing of opposition. Additionally, the petition must be served on a public officer or agency when required by statute or rule 44.5.

(Subd (b) amended effective January 1, 2004; previously amended effective January 1, 1951, July 1, 1964, January 1, 1984, July 1, 1985, July 1, 2000, and January 1, 2002.)

(2002) **[Supporting documents]** A petition for a writ that seeks review of a trial court ruling shall be accompanied by a record adequate to permit review of the ruling, including:

~~**(2002)** a copy of the order or judgment from which relief is sought;~~

~~**(2002)** copies of all documents and exhibits submitted to the trial court supporting and opposing petitioner's position;~~

~~**(2002)** copies of all other documents submitted to the trial court that are necessary for a complete understanding of the case and the ruling;~~

~~(4) a transcript of the proceedings leading to the order or judgment below or, if a transcript is unavailable, a declaration by counsel (i) explaining why a transcript is unavailable and (ii) fairly summarizing the proceedings, including arguments by counsel and the basis of the trial court's decision, if stated; or a declaration by counsel stating that the transcript has been ordered, the date it was ordered, and the date it is expected to be filed, which shall be a date prior to any action requested of the reviewing court other than issuance of a stay supported by other parts of the record. A full summary of the oral proceedings may be omitted if part of the relief sought is an order requiring preparation of a transcript for the use of an indigent criminal defendant in support of the writ petition, and counsel's declaration demonstrates the petitioner's need for and entitlement to the transcript.~~

~~All copies of documents shall be legible.~~

~~A petitioner who requests an immediate stay shall explain in the petition the reasons for the urgency and set forth all relevant time constraints.~~

~~In exigent circumstances, a petition may be filed without the documents required by (1), (2), and (3) if a declaration by counsel explains the urgency and the circumstances making the documents unavailable and fairly summarizes their substance.~~

~~If a petitioner does not submit the required record and explanations or does not present facts sufficient to excuse the failure to submit them, the court may summarily deny the stay request, the petition, or both.~~

~~*(Subd (c) adopted effective January 1, 1988.)*~~

~~**(2002)** **[Supporting documents tabbed, paginated, and listed]** Documents submitted in support of the petition shall~~

~~**(2002)** Be bound together at the end of the petition or in separate volumes not to exceed 300 pages each, with consecutive pagination throughout;~~

~~**(2002)** Be index-tabbed by number or letter; and~~

~~**(2002)** Begin with a table of contents listing each document by title and its index-tab number or letter.~~

The clerk shall accept for filing petitions and supporting documents not in compliance with this subdivision; but the court may give the petitioner notice requiring that the petition and documents be brought into compliance within a stated reasonable time, or the petition may be stricken or denied summarily.

(Subd (d) amended effective July 1, 2000; adopted effective January 1, 1988.)

(2002) **[Sealed records]** Rule 12.5 (Sealed records) applies if a party seeks to lodge or file a record under seal or to unseal a record.

(Subd (e) adopted effective January 1, 2001.)

(2002) **[Return]** If the petition is granted, with or without prior service or opposition, and a writ or order to show cause issues, the respondent or real party in interest or both, separately or jointly, may make a return, by demurrer, verified answer or both. Unless a different return date is specified by the court, the return shall be made at least five days before the date set for hearing. If the return is by demurrer alone, and the demurrer is not sustained, the peremptory writ may issue without leave to answer.

(Subd (f) relettered effective January 1, 2001; former subd (e) relettered effective January 1, 1988; previously amended effective January 1, 1951, and January 1, 1959.)

(2002) **[Attorney General's amicus curiae brief]** If an alternative writ or an order to show cause is issued, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or the presiding justice, unless the brief is submitted on behalf of another state officer or agency. The Attorney General shall serve and file the brief within 14 days after the date the return is filed or, if no return is filed, the date it was due. The brief shall provide the information required by rule 13(b)(2) and comply with rule 13(b)(4). Any party may serve and file an answer within 14 days after the brief is filed.

(Subd (g) adopted effective January 1, 2002.)

(2002) **[Notice to trial court]** If a writ or order issues directed to any judge, court, board, or other officer or tribunal, the clerk of the reviewing court shall promptly transmit a certified copy of the writ or order to the court, board, tribunal or person to whom it is addressed.

If the writ or order stays or prohibits proceedings scheduled to occur within seven days of its issuance, or if the writ or order requires that action be taken by the respondent within seven days, or in any other urgent situation, the clerk of the reviewing court shall make a reasonable effort to give telephone notice to the clerk of the court or tribunal below, who shall notify the judge or other officer most directly concerned. Telephone notice of the summary denial of a writ is not required, whether or not a stay was previously issued.

(Subd (h) relettered effective January 1, 2002; adopted effective January 1, 2984; previously relettered effective January 1, 1988, and January 1, 2001.)

(2002) **[Proceedings not covered by this rule]** The provisions of this rule shall not apply to applications for a writ of habeas corpus, except as provided in rule 56.5, or to petitions for review pursuant to rules 57, 58, and 59.

(Subd (i) amended effective January 1, 2004; relettered effective January 1, 1984; January 1, 1988, January 1, 2001, and January 1, 2002.)

(2002) **[Time to file a responsive pleading under Code of Civil Procedure section 418.10]** If a petition for review is filed in the Supreme Court after the Court of Appeal denies a writ of mandate, the time for filing a responsive pleading in the trial court under Code of Civil Procedure section 418.10(c) is extended until 10 days after the Supreme Court files its order denying the petition.

(Subd (j) relettered effective January 1, 2002; adopted as subd (h) effective January 1, 1997; previously relettered as subd (i) effective January 1, 2001.)

Rule 56 repealed effective January 1, 2005; previously amended effective January 1, 1951, January 1, 1959, January 1, 1984, July 1, 1985, January 1, 1988, August 1, 1993, January 1, 1997, July 1, 2000, January 1, 2001, January 1, 2002, and January 1, 2004. The repealed rule related to original proceedings.

Advisory Committee Comment (2002)

New subdivision (g) is derived from former rule 14(c) as it applied to original proceedings.

Drafter's Notes

Rule 56(b) was amended to refer expressly to sections 1088.5 and 1089.5 of the Code of Civil Procedure (Stats. 1982, ch. 193), which govern proof of service and time to respond to a petition for writ of mandate when no alternative writ is sought.

1983 Responding to legislation (Stats. 1983, ch. 818, § 1) that makes Code of Civil Procedure sections 1088.5 and 1089.5 (procedure for writ of mandate) applicable only to trial courts, the Judicial Council amended rule 56(b) to remove references to these code sections in the rule governing original proceedings in appellate courts. See also the note following rule 32.

1985 Rule 56 amended to (a) require the proof of service of a writ petition to name each party represented by each attorney served, (b) state that opposition is not needed unless requested, and (c) change the present wording that the court may "act on" the petition without requiring an opposition, to ". . . deny the petition or issue an alternative writ . . . ."

1988 Rule 56 was amended to restate the material needed to constitute an adequate record for writ review of trial court action (see *Sherwood v. Superior Court* (1979) 23 Cal.3d 183) and to require index-tabbing and consecutive pagination of each exhibit to the petition. A modification was made to the proposal previously published for comment

to make it clear that the consecutive pagination requirement does not mean that all exhibits must be paginated consecutively to one another as in a clerk's transcript, but only that each exhibit be paginated.

1993 The Judicial Council of California has amended rules 15, 44, and 56 of the California Rules of Court to require that attorneys' California State Bar membership numbers appear on all appellate filings. The amendments were effective August 1, 1993, but court clerks are required to give attorneys an opportunity to correct papers filed without the bar number.

These amendments conform appellate practice to the requirement that California State Bar membership numbers appear on trial court filings. (Rules 201 and 501 amended effective July 1, 1993.)

1997 Subdivision (h) was added to rule 56 to extend the time to file a responsive pleading in the trial court when a petition for review has been filed in certain writ proceedings.

2000 See notes following rules 15 and 24.

2001 56(e) added to reflect new rule 12.5.

2002 See note following rule 1.

Rule 56.4. Costs in original proceedings

(a) [Decision by opinion; presumption] Except as provided in this rule, the prevailing party in an original proceeding shall be entitled to costs if the reviewing court resolves the original proceeding by written opinion after issuing an alternative writ, order to show cause, or peremptory writ in the first instance. In any case in which the interests of justice require it, the reviewing court may make any award or apportionment of costs it deems proper or decline to award costs. The award or denial of costs shall be provided for in the court's opinion or order on the granting or denial of the writ. The foregoing provisions do not apply in proceedings arising from criminal and juvenile cases.

(b) [Items recoverable] The items recoverable as costs under this rule shall be as specified in rule 26 governing civil appeals and can include the cost of preparing and providing the record used in the writ proceeding.

(c) [Claiming costs; opposition] A party who claims costs awarded by the reviewing court shall, within 40 days after the opinion of the reviewing court becomes final as to that court, serve and file in the trial court a memorandum of costs verified as prescribed by rule 870(a)(1).

A party may move to have costs taxed in the same manner and within a like time after service of a copy of the memorandum of costs, as prescribed by rule 870(b). After the costs have been taxed, or after the time for taxing the costs

has expired, the award of costs may be enforced in the same manner as a money judgment.

Rule 56.4 repealed effective January 1, 2005; adopted effective July 1, 1996. The repealed rule related to costs in original proceedings.

Drafter's Notes

1996 This rule was adopted to provide for an award of costs in original writ proceedings by establishing a presumption that the prevailing party is entitled to an award of costs.

Rule 56.5. Original proceedings seeking release or modification of custody

(a) [Use of Judicial Council form required]

A petition to a reviewing court for a writ of habeas corpus, or for any other writ within its original jurisdiction, seeking the release from or modification of the conditions of custody of one who is confined under the process of any court of this State in a State or local penal institution, hospital, narcotics treatment facility, or other institution must be on a form adopted by the Judicial Council. Any such petition is exempt from the provisions of rule 56 relating to form and content of a petition and requiring a petition to be accompanied by points and authorities.

(Subd (a) amended effective January 1, 2004; previously amended effective January 1, 2003.)

(b) Exception for good cause

For good cause the court may permit the filing of a petition that does not comply with the provisions of subdivision (a) of this rule.

(Subd (b) amended effective January 1, 2004.)

(c) Petitions filed by attorneys

If the petition is filed by an attorney:

(1) The petition need not be on the form specified in (a) but must contain the pertinent information specified in that form and must comply with the requirements of rule 14(a) and (b);

(2) If the petition is accompanied by a memorandum of points and authorities, the memorandum must comply with the requirements of rule 14(a) and (b);

(3) The petition must be accompanied by a lodged copy of any related petition (excluding exhibits) previously filed in any lower state court, or in any federal court, pertaining to the same judgment and petitioner. If such documents have previously been lodged with the Supreme Court, the petition need only so state; and

(4) Any supporting documents accompanying the petition must comply with the requirements of rule 56(d).

(Subd (c) amended effective January 1, 2004; adopted effective July 1, 1995; previously amended effective January 1, 2003.)

(d) [Nonconforming petitions] A petition that is not in technical compliance with (c) but that is otherwise in compliance with applicable court rules must be accepted and filed. It may be stricken, however, if the noncompliance is not cured promptly on request of the clerk.

(Subd (d) amended and lettered effective January 1, 2003; adopted as part of subd (c) effective July 1, 1995.)

Rule 56.5 repealed effective January 1, 2005; adopted effective January 1, 1966; previously amended effective July 1, 1995, January 1, 2003; and January 1, 2004. The repealed rule related to original proceedings seeking release or modification of custody.

Rule 57. Review of Workers' Compensation Appeals Board cases

(a) [Petition] A petition to review an order or award of the Workers' Compensation Appeals Board shall be accompanied by proof of service of two copies thereof on the Workers' Compensation Appeals Board and one copy upon each party who entered an appearance in the action before the Workers' Compensation Appeals Board and whose interest therein is adverse to the party filing the petition. If it is claimed that the decision is not supported by substantial evidence, the petition must fairly state all the material evidence relative to the point at issue. The petition shall include, as exhibits, copies of:

(1) each order, decision, or award to be reviewed, and

(2) the referee's findings and decision, including the referee's report and recommendation on the petition for reconsideration.

(Subd (a) amended effective January 1, 1980; previously amended effective November 13, 1951, July 1, 1968, and July 1, 1973.)

(b) [Answer and briefs] Within 20 days after service of the petition, the board and any real party in interest may serve and file or join in the filing of an answer and brief. Within 10 days after service of an answer, the petitioner may serve and file a reply. Service of the answer and reply shall also be made upon all adverse parties.

(Subd (b) amended effective July 1, 1968; previously amended effective November 13, 1951.)

Rule 57 repealed effective January 1, 2005; previously amended November 13, 1951, July 1, 1968, July 1, 1973, and January 1, 1980. The repealed rule related to review of Workers' Compensation Appeals Board cases.

Drafter's Notes

1980 Rule 57(a) is amended to conform to the statutes by substituting "Workers' Compensation Appeals Board" for "Workmen's Compensation Appeals Board" wherever the words appear.

Rule 58. Review of Public Utilities Commission cases

(a) [Petition] A petition to the Supreme Court or Court of Appeal to review an order of the Public Utilities Commission shall be accompanied by proof of service of copies thereof on the Public Utilities Commission and on any real parties in interest. As used in this rule, a "real party in interest" is one who

(1) was a party of record to the action or proceeding before the commission, and

(2) presented before the commission a position adverse to that taken before the commission by the petitioner for review. The petition shall be verified.

(Subd (a) amended effective January 1, 1998; previously amended effective January 1, 1951 and July 1, 1981.)

(b) [Answer and briefs] Within 30 days after service of the petition, the commission and any real party in interest may serve and file or join in the filing of an answer and brief. Within 20 days after service of an answer the petitioner may serve and file a reply.

(Subd (b) amended effective July 1, 1981.)

Rule 58 repealed effective January 1, 2005; previously amended effective January 1, 1951, July 1, 1981, and January 1, 1998. The repealed rule related to review of Public Utilities Commission cases.

Drafter's Notes

1981 Rule 58 has been amended to require service of petitions to review PUC orders on real parties in interest, define real parties in interest, and make related changes. A statutory requirement that these petitions be verified has been included in the text of the rule, as a reminder.

1998 Subdivision (a) was amended to recognize a statutory change that allows parties to petition for review of "adjudicatory" decisions of the Public Utilities Commission in the Court of Appeal (Stats. 1996, ch. 855, amending Pub. Util. Code, §1759). "Nonadjudicatory" decisions will still be reviewed only by the Supreme Court.

Rule 59. Review of Agricultural Labor Relations Board cases and Public Employment Relations Board cases

(a) [Petition] A petition to a Court of Appeal to review a final order of the Agricultural Labor Relations Board or the Public Employment Relations Board shall be accompanied by proof of service on the Executive Secretary of the Agricultural Labor Relations Board in Sacramento or the Executive Director of the Public Employment Relations Board in Sacramento and on any real party in interest. As used in this subdivision, "real party in interest" includes all parties of record to the proceeding before the board. The petition shall be verified unless the petitioner is exempted from verifying pleadings by Code of Civil Procedure section 446. Service shall be made as provided in Code of Civil Procedure sections 1010-1015.

(Subd (a) amended effective July 1, 1984.)

(b) [Filing of certified record] Within the time permitted by Labor Code section 1160.8 for the Agricultural Labor Relations Board or Government Code sections 3520(c), 3542(c), or 3564(c) for the Public Employment Relations Board, the board shall file the certified record of the proceedings and shall simultaneously file and serve on all parties an index to the certified record.

(Subd (b) amended effective July 1, 1984.)

(c) [Brief in support of petition] Within 30 days after service of the index to the certified record, the petitioner shall serve and file a brief in support of the petition.

(d) [Other briefs] Within 30 days after service of the brief of petitioner, the board shall, and any real party in interest may, serve and file a brief in response to the brief of petitioner. Within 20 days after service of a response brief, the petitioner may serve and file a reply brief.

Rule 59 repealed effective January 1, 2005; adopted effective January 1, 1983; previously amended effective July 1, 1984. The repealed rule related to review of Agricultural Labor Relations Board cases and Public Employment Relations Board cases.

Drafter's Notes

1984 Rule 59 is amended to apply to petitions for review of Public Employment Relations Board orders, as well as orders of the Agricultural Labor Relations Board.

Rule 60. Obtaining record or informal response in habeas corpus proceedings

When a petition for a writ of habeas corpus is filed in a reviewing court, seeking the release from or modification of conditions of custody of one who is confined under the process of any court of this state, the court may, before passing on the petition

(1) order the custodian of any record pertaining to the petitioner's case to produce the record or a certified copy to be filed with the clerk of the reviewing court; or

(2) request an informal response from the respondent or real party in interest. The informal response shall be in writing and shall be served and filed within 15 days, or the time specified by the court in the request.

A copy of the request shall be sent to the petitioner, and the informal response shall be served upon the petitioner. If an informal response is filed, the court shall notify the petitioner that he or she may reply to the informal response within 15 days or a time specified by the court, and the petition shall not be denied until that time has expired.

Rule 60 repealed effective January 1, 2005; previously amended effective January 1, 1985, and July 1, 1985. The repealed rule related to obtaining record or informal response in habeas corpus proceedings.

Drafter's Notes

1984 Rule 60 of the California Rules of Court was amended to establish a procedure for securing informal factual responses to habeas corpus petitions, with specific provision for notice to the petitioner and an opportunity to reply to any informal response received.

1985 Rule 60 was amended to delete the words "shall be limited to factual matters."

Rule 75. Administrative presiding justices in the Courts of Appeal

In a Court of Appeal having more than one division the Chief Justice may designate one of the presiding justices to act as an administrative presiding justice, to serve at the pleasure of the Chief Justice for such period as may be specified in the designation order. In a Court of Appeal having one division, the presiding justice shall act as the administrative presiding justice. An administrative presiding justice shall perform those duties that are specified in rules adopted by the Judicial Council and, in addition, those duties that may be delegated to the administrative presiding justice with the concurrence of the Chief Justice by a majority of the judges of the court in the district served. In the absence of the administrative presiding justice, an acting administrative presiding justice shall perform those functions; the administrative presiding justice shall select another member of the court as acting administrative presiding justice, or, if the administrative presiding justice fails to do so, the Chief Justice shall select another member of the court as acting administrative presiding justice.

Rule 75 repealed effective January 1, 2005; adopted effective July 1, 1970; previously amended effective July 1, 1976, and July 1, 1994. The repealed rule related to administrative presiding justices in the Courts of Appeal.

Drafter's Notes

1994 Following recommendations by the Judicial Council Rules and Forms Committee, the council: (1) added a new subdivision (a)(12) to rule 1020 to create the Administrative Presiding Justices Standing Advisory Committee; (2) amended rule 1020(d) to include this new committee in the exemption from membership nominating procedures; (3) amended rule 1020(i) to include the committee to those exempted from providing an annual workplan; (4) added new rule 1032 relating to the function and duties of the Administrative Presiding Justices Standing Advisory Committee; (5) amended rule 75 to refer to Administrative Presiding Justices and to use gender neutral language; and (6) amended rule 76 to specify the authority of Administrative Presiding Justices relative to budget and expenditures.

Rule 76. Authority and duties of administrative presiding justice

(a) [General responsibilities] The administrative presiding justice is responsible for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public.

(Subd (a) adopted effective January 1, 2001.)

(b) [Duties] An administrative presiding justice:

(1) Has general direction and supervision of the clerk/administrator and of all court employees except those specifically assigned to a particular justice or division;

(2) Has the authority of a presiding justice with respect to any matters that have not been assigned to a particular division of the court except that the administrative presiding justice has no authority over the assignment of cases to a division unless such assignment is authorized under rule 47;

(3) Cooperates with the Chief Justice and any officer authorized to act for the Chief Justice in connection with the making of reports and the assignment of judges or retired judges under Section 6, Article VI, of the California Constitution;

(4) Cooperates with the Chief Justice in expediting judicial business and equalizing the work of judges when appropriate by recommending the transfer of cases by the Supreme Court under Section 12, Article VI, of the California Constitution;

(5) Acts on behalf of the court, in connection with general court administration, including matters involving personnel. "General court administration" refers to the day-to-day operations of the court. The administrative presiding justice must secure the approval of a majority of the justices in the district before implementing any change in court policies;

(6) Has sole authority within his or her district with regard to the budget as allocated by the Chair of the Judicial Council, including but not limited to budget transfers, execution of purchase orders, obligation of funds, and approval of payments; and

(7) Has sole authority within his or her district over the operation, maintenance, renovation, expansion and assignment of all facilities used and occupied by the district except as provided in subdivision [c].

(Subd (b) relettered and amended effective January 1, 2002; adopted as untitled subdivision effective July 1, 1970; previously amended effective July 1, 1994.)

(c) [Geographically separate divisions] Under the general oversight of the administrative presiding justice, a presiding justice of a geographically separate division:

(1) Generally directs and supervises all division court employees not assigned to a particular justice;

(2) Has authority to act on behalf of the division regarding day-to-day operations;

(3) Administers the division budget for day-to-day operations, including expenses for maintenance of facilities and equipment; and

(4) Operates, maintains, and assigns space in all facilities used and occupied by the division.

(Subd (c) adopted effective January 1, 2002.)

Rule 76 repealed effective January 1, 2005; adopted effective July 1, 1970; previously amended effective July 1, 1994, and January 1, 2002. The repealed rule related to authority and duties of administrative presiding justice.

Drafter's Notes

1994 Following recommendations by the Judicial Council Rules and Forms Committee, the council: (1) added a new subdivision (a)(12) to rule 1020 to create the Administrative Presiding Justices Standing Advisory Committee; (2) amended rule 1020(d) to include this new committee in the exemption from membership nominating procedures; (3) amended rule 1020(i) to include the committee to those exempted from providing an annual workplan; (4) added new rule 1032 relating to the function and duties of the Administrative Presiding Justices Standing Advisory Committee; (5) amended rule 75 to refer to Administrative Presiding Justices and to use gender neutral language; and (6) amended rule 76 to specify the authority of Administrative Presiding Justices relative to budget and expenditures.

2002 The amendments to rule 76 reflect the current responsibilities and leadership roles of the Administrative Presiding Justices, and address the responsibilities of the presiding justice of a geographically separate division. New rule 76.1 outlines the responsibilities and duties of the appellate clerk/administrator acting under the general direction and supervision of the administrative presiding justice. The rule also addresses the responsibilities of the assistant clerk/administrator of a geographically separate division.

Rule 76.1. Authority and duties of appellate clerk/administrator

(a) [Selection] An appellate court may employ a clerk/administrator selected in accordance with procedures adopted by the court.

(b) [General responsibilities] Acting under the general direction and supervision of the administrative presiding justice, the clerk/administrator is responsible for planning, organizing, coordinating, and directing with full authority and accountability the management of the Office of the Clerk of the Court and all non-judicial administrative support activities in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public.

(c) [Duties] Under the direction of the administrative presiding justice and consistent with the law and rules of court, the clerk/administrator:

(1) (*Personnel*) Provides general direction to and supervision of all the employees of the court who are assigned to the clerk/administrator by the administrative presiding justice, and ensures that a full range of human resources support is provided to the court;

(2) (*Budget*) Develops, administers, and monitors the budget of an appellate court and develops practices and procedures to ensure that annual expenditures are within the court's budget;

(3) (*Contracts*) Negotiates contracts on behalf of the court, in accordance with established contracting procedures and all applicable laws;

(4) (*Calendar management*) Supervises and employs efficient calendar and caseflow management systems, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;

(5) (*Technology*) Coordinates technological and automated systems activities to assist the court;

(6) (*Facilities*) Coordinates facilities, space planning, court security, and business services support, including the purchase and management of equipment and supplies;

(7) (*Records*) Creates and manages uniform record-keeping systems, collecting data on pending and completed judicial business and the internal operation of the court, as required by the court and the Judicial Council;

(8) (*Recommendations*) Identifies problems, recommending policy, procedural, and administrative changes to the court;

(9) (*Public relations*) Represents the court to internal and external customers, including the other branches of government, on issues pertaining to the court;

(10) (*Liaison*) Acts as liaison to other governmental agencies;

(11) (*Committees*) Provides staff for judicial committees;

(12) (*Administration*) Develops and implements administrative and operational programs and policies for the court and for the Office of the Clerk of the Court; and

(13) (*Other*) Performs other duties as the administrative presiding justice directs.

(d) [Geographically separate divisions] Under the general oversight of the appellate clerk/administrator, an assistant clerk/administrator of a geographically separate division has responsibility for the non-judicial administrative support activities of his or her division.

Rule 76.1 repealed effective January 1, 2005; adopted effective January 1, 2002. The repealed rule related to authority and duties of appellate clerk/administrator.

Drafter's Notes

2002 The amendments to rule 76 reflect the current responsibilities and leadership roles of the Administrative Presiding Justices, and address the responsibilities of the presiding justice of a geographically separate division. New rule 76.1 outlines the responsibilities and duties of the appellate clerk/administrator acting under the general direction and supervision of the administrative presiding justice. The rule also addresses the responsibilities of the assistant clerk/administrator of a geographically separate division.

Rule 76.5. Appointment of counsel in criminal appeals

(a) [Procedures] Each appellate court shall adopt procedures for appointment of counsel in criminal cases for indigent appellants who are not represented by the State Public Defender. The procedures shall require each attorney to complete a questionnaire showing the date of admission to the bar and the attorney's qualifications and experience.

(b) [Lists of qualified attorneys] On receiving each completed questionnaire, the court shall evaluate the attorney's qualifications to represent appellants in criminal cases, and then place the attorney's name on one or more lists to receive appointments to cases for which he or she is qualified. Each Court of Appeal shall maintain at least two lists, to match the attorney's qualifications to the demands of the case. In establishing the lists, the court shall consider the guidelines in section 20 of the Standards of Judicial Administration, except as provided in subdivision (d).

(c) [Evaluation] The court shall review and evaluate the performance of appointed counsel to determine whether counsel's name should remain on the same appointment list, be placed on a different list, or be deleted.

(d) [Contracts for performance of administrative functions] The court may contract with an administrator having substantial experience in handling criminal appeals to perform the functions specified in this rule. The guidelines in section 20 of the Standards of Judicial Administration need not be applied if the contract provides for a qualified attorney to consult with and assist appointed counsel concerning the issues on appeal and appellant's opening brief. The court shall provide the administrator with information needed for the performance of the administrator's duties, and, if the administrator is to perform the review and evaluation functions specified in subdivision (c), the court shall notify the administrator of superior or substandard performance by appointed counsel.

Rule 76.5 repealed effective January 1, 2005; adopted effective January 1, 1985. The repealed rule related to appointment of counsel in criminal appeals.

Drafter's Notes

1984 New rule 76.5 is adopted to prescribe administrative procedures for the appointment of counsel in criminal appeals, and new section 20 of the Standards of Judicial Administration is adopted containing recommended guidelines for appointment of counsel in criminal appeals.

Rule 76.6. Qualifications of counsel in death penalty appeals and habeas corpus proceedings

(a) [Purpose] The purpose of this rule is to define minimum qualifications for attorneys appointed to represent persons in the Supreme Court in death penalty appeals and habeas corpus proceedings related to sentences of death. An attorney is not entitled to appointment simply because the minimum qualifications are met.

(b) [General qualifications] The Supreme Court shall appoint an attorney only if, after reviewing the attorney's experience, writing samples, references, and evaluations as set forth in subdivisions (d) through (f), the court determines that the attorney has demonstrated the commitment, knowledge, and skills necessary to competently represent the defendant. An attorney appointed under this rule must be willing to cooperate with an assisting counsel or entity as may be designated by the court.

(c) [Definitions] The following definitions apply:

(1) "Appointed counsel" means an attorney appointed by the Supreme Court to represent a person in a death penalty appeal or death penalty related habeas corpus proceedings in the Supreme Court. Appointed counsel may be either lead counsel or associate counsel.

(2) "Lead counsel" means an appointed attorney or an attorney in the Office of the State Public Defender, the California Habeas Resource Center, or the California Appellate Project, who is responsible for the overall conduct of the case and for supervising the work of associate and supervised counsel. Whenever more than one attorney is appointed to represent a defendant jointly in a death penalty appeal, in death penalty related habeas corpus proceedings in the Supreme Court, or in both classes of proceedings together, one such attorney shall be designated as lead counsel.

(3) "Associate counsel" means an attorney appointed by the Supreme Court who does not have the primary responsibility for the case. Associate counsel must meet the same minimum qualifications as lead counsel.

(4) "Supervised counsel" means an attorney who works under the immediate supervision and direction of lead or associate counsel, but is not appointed by

the Supreme Court. Supervised counsel must be an active member of the State Bar of California.

(5) "Assisting counsel or entity" means an attorney or entity designated by the Supreme Court to provide outside consultation and resource assistance to appointed counsel. Entities that may be designated in this capacity include, as appropriate, the Office of the State Public Defender, the California Habeas Resource Center, and the California Appellate Project.

(d) [Qualifications for appointed appellate counsel] An attorney appointed to represent a person in the Supreme Court in a death penalty appeal, as either lead or associate counsel, must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years;

(2) Either:

(A) Counsel of record for a defendant in seven completed felony appeals, including one murder; or

(B) Counsel of record for a defendant in five completed felony appeals and supervised counsel for a defendant in two death penalty appeals in which the opening brief has been filed. Service as supervised counsel in a death penalty appeal shall apply toward the minimum qualification described in this subdivision (d)(2)(B) only if lead or associate counsel in that appeal attests that the supervised attorney has performed a significant portion of work on the case and recommends the attorney for appointment;

(3) Familiarity with the practices and procedures of the Supreme Court, including those specifically related to death penalty appeals;

(4) Within three years before appointment, completion of at least nine hours of Supreme Court-approved appellate criminal defense training, continuing education, or course of study, at least six hours of which involve death penalty appeals. If the Supreme Court previously has appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years prior to the request for a new appointment, the court, upon review of counsel's previous work, may find that such representation constitutes compliance with this training requirement; and

(5) Proficiency in issue identification, research, analysis, writing, and advocacy, taking into consideration:

(A) Two writing samples, ordinarily appellate briefs, written by the attorney and involving analysis of complex legal issues;

(B) If the attorney has been appointed previously in a death penalty appeal or death penalty related habeas corpus proceeding in the Supreme Court, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigent appellants in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (d) amended effective April 15, 1998.)

(e) [Qualifications for appointed habeas corpus counsel] An attorney appointed to represent a person in the Supreme Court in death penalty related habeas corpus proceedings, as either lead or associate counsel, must have at least the following qualifications and experience:

(1) Active practice of law in California for at least four years;

(2) Either:

(A) Counsel of record for a defendant in five completed felony appeals or writ proceedings, including one murder, and counsel of record for a defendant in three jury trials or three habeas corpus proceedings involving serious felonies; or

(B) Counsel of record for a defendant in five completed felony appeals or writ proceedings and supervised counsel in two Supreme Court death penalty related habeas corpus proceedings in which the petition has been filed. Service as supervised counsel in a Supreme Court death penalty related habeas corpus proceeding shall apply toward the minimum qualifications described in this subdivision (e)(2)(B) only if lead or associate counsel in that proceeding attests that the attorney has performed a significant portion of work on the case and recommends the attorney for appointment;

(3) Familiarity with the practices and procedures of the California Supreme Court and the federal courts in death penalty habeas corpus proceedings;

(4) Within three years before appointment, completion of at least nine hours of Supreme Court-approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least six hours of which involve death penalty habeas corpus proceedings. If the Supreme Court previously has appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years prior to the request for a new appointment, the

court, upon review of counsel's previous work, may find that such representation constitutes compliance with this training requirement; and

(5) Proficiency in issue identification, research, analysis, writing, investigation, and advocacy, taking into consideration:

(A) Three writing samples, ordinarily two appellate briefs and one habeas corpus petition, written by the attorney and involving analysis of complex legal issues;

(B) If the attorney has been appointed previously in a death penalty appeal or death penalty related habeas corpus proceeding in the Supreme Court, the evaluation of the assisting counsel or entity in that proceeding;

(C) Recommendations from two attorneys familiar with the attorney's qualifications and performance; and

(D) If the attorney is on a panel of attorneys eligible for appointments to represent indigent appellants in the Court of Appeal, the evaluation of the administrator responsible for those appointments.

(Subd (e) amended effective April 15, 1998.)

(f) [Alternative qualifications] The Supreme Court may appoint an attorney who does not meet the requirements of subdivisions (d)(1) and (d)(2) or (e)(1) and (e)(2) of this rule if the attorney has the qualifications described in subdivisions (d)(3) through (d)(5) or (e)(3) through (e)(5) and:

(1) The court finds that the attorney has extensive experience in another jurisdiction or a different type of practice (such as civil trials or appeals, academic work, or work for a court or prosecutor) for at least four years, such that the attorney has substantially equivalent experience in complex cases as an attorney qualified under subdivision (d) or (e);

(2) Ongoing consultation is available to the attorney from an assisting counsel or entity designated by the court; and

(3) Within two years before appointment, the attorney has completed at least 18 hours of Supreme Court-approved appellate criminal defense or habeas corpus defense training, continuing education, or course of study, at least nine hours of which involve death penalty appellate or habeas corpus proceedings. The Supreme Court shall determine in each case whether the training, education, or course of study completed by a particular attorney satisfies the requirements of this subdivision in light of his or her individual background and experience. If the Supreme Court previously has appointed counsel to represent a defendant in a death penalty appeal or a related habeas corpus proceeding, and counsel has provided active representation within three years prior to the request for a new

appointment, the court, upon review of counsel's previous work, may find that such representation constitutes compliance with this training requirement.

(Subd (f) amended effective April 15, 1998.)

(g) [Attorneys without trial experience] If an attorney appointed under either subdivision (e) or subdivision (f) to represent a defendant in death penalty related habeas corpus proceedings in the Supreme Court does not have experience in conducting trials or evidentiary hearings, the attorney must associate an attorney who has such experience if an evidentiary hearing is ordered in the habeas corpus proceeding.

(h) [Use of supervised counsel] An attorney who does not meet the qualifications described in subdivisions (d), (e), or (f) may assist lead or associate counsel, but must work under the immediate supervision and direction of lead or associate counsel.

(i) [Dual appointment] An attorney appointed to represent a defendant in both a death penalty appeal and death penalty related habeas corpus proceedings in the Supreme Court must meet the minimum qualifications of both subdivisions (d) and (e), or of subdivision (f). Notwithstanding the foregoing, two attorneys together may be eligible for appointment to represent a defendant jointly in both a death penalty appeal and death penalty related habeas corpus proceedings in the Supreme Court if the Supreme Court finds that their qualifications in the aggregate satisfy the provisions of both subdivisions (d) and (e), or of subdivision (f).

(j) [Designated entities as appointed counsel] Notwithstanding any other provision of this rule, the State Public Defender is qualified and eligible to serve as appointed counsel in death penalty appeals, the California Habeas Resource Center is qualified and eligible to serve as appointed counsel in death penalty related habeas corpus proceedings in the Supreme Court, and the California Appellate Project is qualified and eligible to serve as appointed counsel in both classes of proceedings. When serving as appointed counsel in a death penalty appeal, the State Public Defender or the California Appellate Project shall not assign any attorney as lead counsel in the appeal unless it finds the attorney has the qualifications described in subdivisions (d)(1) through (d)(5) or the Supreme Court finds the attorney to qualify under subdivision (f). When serving as appointed counsel in a death penalty related habeas corpus proceeding in the Supreme Court, the California Habeas Resource Center or the California Appellate Project shall not assign any attorney as lead counsel in the proceeding unless it finds the attorney has the qualifications described in subdivisions (e)(1) through (e)(5) or the Supreme Court finds the attorney to qualify under subdivision (f).

(k) [Attorney appointed by federal court] Notwithstanding any other provision of this rule, the Supreme Court may appoint an attorney who is under appointment by a federal court in a death penalty related habeas corpus proceeding for the purpose of exhausting state remedies in the Supreme Court and for all subsequent state proceedings in that case, if the Supreme Court finds the attorney has the commitment,

proficiency and knowledge necessary to represent the defendant competently in state proceedings.

Rule 76.6 repealed effective January 1, 2005; adopted by the Supreme Court and the Judicial Council effective February 27, 1998; previously amended effective April 15, 1998. The repealed rule related to qualifications of counsel in death penalty appeals and habeas corpus proceedings.

Drafter's Notes

February 1998 This rule implements legislation that became effective January 1, 1998, requiring both the Judicial Council and the Supreme Court to adopt rules on the qualifications of counsel for capital appeals and habeas corpus proceedings. (SB 513 [Lockyer]; Gov. Code, § 68655.) The new rule sets standards for counsel representing defendants in capital appeals and habeas corpus proceedings.

April 1998 This rule was amended to specify that the training requirement may be satisfied if an attorney has provided active representation of a defendant in a death penalty appeal or habeas corpus proceeding within the previous three years.

Rule 77. Supervising progress of appeals

(a) [Duty to assure prompt completion] Each Administrative Presiding Justice of a Court of Appeal having more than one division located in the same city and the presiding justices of other Courts of Appeal have general responsibility for assuring that all records on appeal and briefs are promptly filed, and staff shall be provided for that purpose to the extent funds are appropriated and available.

(b) [Authority] Notwithstanding any other provision of these rules, the administrative presiding justices and presiding justices referred to in subdivision (a) are authorized to

(1) grant or deny applications to extend the time for filing records on appeal and briefs, except that a presiding justice may grant an extension of time for briefs in conjunction with an order for augmentation of the record on appeal;

(2) order the dismissal of an appeal, or any other authorized sanction, for a noncompliance with these rules, if no application for an extension of time or for relief from default has been filed prior to entry of the order; and

(3) grant relief from a default or from a sanction other than dismissal imposed for the default.

(Subd (b) amended effective July 1, 1990.)

Rule 77 repealed effective January 1, 2005; adopted effective July 1, 1976; previously amended effective July 1, 1990. The repealed rule related to supervising progress of appeals.

Drafter's Notes

1990 Rule 77 was amended slightly to clarify the power of administrative presiding justices of the State Court of Appeal to supervise the progress of appeals.

Rule 78. Notification of failure to perform judicial duties

The Chief Justice or presiding justice of a reviewing court, or the administrative presiding justice with regard to a presiding justice, shall notify the Commission on Judicial Performance of

(1) a reviewing court judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, or

(2) any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences for authorized vacations and attendance at schools, conferences, and workshops for judges.

The Chief Justice or presiding justice or administrative presiding justice shall give the judge a copy of any notification to the commission.

Rule 78 repealed effective January 1, 2005; adopted effective July 1, 1983; previously amended effective January 1, 1991. The repealed rule related to notification of failure to perform judicial duties.

Drafter's Notes

1983 At the suggestion of the Commission on Judicial Performance, a new rule 78 is added requiring the Chief Justice, presiding justice or administrative presiding justice of a reviewing court to notify the commission of a reviewing court judge's substantial failure to perform judicial duties. This provision parallels subdivision (a)(19) of rules 244.5 and 532.5, concerning trial court judges.

1990 The council amended rules 78, 205, and 532.5 to clarify the duties of presiding judges to report both the failure of judges to perform judicial duties and their absences caused by disabilities. The council also voted to defer consideration of the proposal to reduce the time necessary to trigger the reporting duty until a judicial leave policy is drafted.

Rule 80. Local rules of Courts of Appeal

(a) A brief, petition, motion, or other document prepared in accordance with these rules shall be accepted for filing notwithstanding any local Court of Appeal rule imposing other requirements.

(b) A Court of Appeal shall submit to the Reporter of Decisions, for publication in the advance sheets to the Official Reports, any local rule of court adopted after the effective date of this rule.

(c) A local rule of a Court of Appeal shall not become operative prior to 45 days after the date shown on the face of the advance sheet to the Official Reports in which it is first published.

(d) As used in this rule, "publication in the advance sheets to the Official Reports" means publication in the same manner and typeface as amendments to the California Rules of Court and does not include publication in the minutes section of an advance sheet.

Rule 80 repealed effective January 1, 2005; adopted effective January 1, 1983. The repealed rule related to local rules of Courts of Appeal.

Rule 976. Publication of appellate opinions

(a) [Supreme Court] All opinions of the Supreme Court shall be published in the Official Reports.

(Subd (a) adopted effective January 1, 1964.)

(b) [Standards for publication of opinions of other courts] No opinion of a Court of Appeal or an appellate department of the superior court may be published in the Official Reports unless the opinion:

(1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;

(2) resolves or creates an apparent conflict in the law;

(3) involves a legal issue of continuing public interest; or

(4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

(Subd (b) amended effective January 1, 1983; previously amended effective November 11, 1966, and January 1, 1972; adopted effective January 1, 1964.)

(c) [Publication procedure]

(1) *(Courts of Appeal and appellate departments)* An opinion of a Court of Appeal or an appellate department of the superior court shall be published if a majority of the court rendering the opinion certifies, prior to the decision's finality in that court, that it meets one or more of the standards of subdivision (b).

(2) *(Supreme Court)* An opinion certified for publication shall not be published, and an opinion not so certified shall be published, on an order of the Supreme Court to that effect.

(Subd (c) amended effective January 1, 1983; previously amended effective November 11, 1966, and January 1, 1972; adopted effective January 1, 1964.)

(d) [Superseded opinions] Unless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review, rehearing, or other action shall be published. After granting review, after decision, or after dismissal of review and remand as improvidently granted, the Supreme Court may order the opinion of the Court of Appeal published in whole or in part.

(Subd (d) amended effective May 6, 1985; previously amended effective January 1, 1983; Subd (e) renumbered subd (d) effective January 1, 1972; adopted effective January 1, 1964.)

(e) [Editing] Written opinions of the Supreme Court, Courts of Appeal, and appellate departments of the superior courts shall be filed with the clerks of the respective courts. Two copies of each opinion of the Supreme Court, and two copies of each opinion of a Court of Appeal or of an appellate department of a superior court which the court has certified as meeting the standard for publication specified in subdivision (b) shall be furnished by the clerk to the Reporter of Decisions. The Reporter of Decisions shall edit the opinions for publication as directed by the Supreme Court. Proof sheets of each opinion in the type to be used in printing the reports shall be submitted by the Reporter of Decisions to the court which prepared the opinion for examination, correction and final approval.

(Subd (f) renumbered subd (e) effective January 1, 1972; previously amended effective November 11, 1966; adopted effective January 1, 1964.)

Rule 976 repealed effective January 1, 2005; adopted by the Supreme Court effective January 1, 1964; previously amended effective November 11, 1966, January 1, 1972, January 1, 1983, and May 6, 1985. The repealed rule related to publication of appellate opinions.

Rule 976.1. Partial publication experiment

(a) [Partial publication authorized] A majority of the court rendering an opinion may certify for publication any part of the opinion that meets the standard for publication specified under subdivision (b) of rule 976. The published part shall indicate that part of the opinion is unpublished. All material, factual and legal, that aids in the application or interpretation of the published part shall be in the published part.

(b) [Other rules applicable] For purposes of rules 976, 977, and 978, the published part of the opinion shall be treated as a published opinion, and the unpublished part as an unpublished opinion.

(c) [Copy to Reporter of Decisions] One extra copy of both the published and unpublished parts of the opinion shall be furnished by the clerk to the Reporter of Decisions.

Rule 976.1 repealed effective January 1, 2005; adopted effective January 1, 1983; previously amended effective January 1, 1984. The repealed rule related to partial publication experiment.

~~Rule 977. Citation of opinions~~

~~(a) [Unpublished opinions]~~ ~~An opinion of a Court of Appeal or an appellate department of the superior court that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b).~~

~~(Subd (a) amended effective January 1, 1997.)~~

~~(b) [Exceptions]~~ ~~Such an opinion may be cited or relied on:~~

~~(1) when the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or~~

~~(2) when the opinion is relevant to a criminal or disciplinary action or proceeding because it states reasons for a decision affecting the same defendant or respondent in another such action or proceeding.~~

~~(Subd (b) amended effective January 1, 1983.)~~

~~(c) [Citation procedure]~~ ~~A copy of any opinion citable under subdivision (b) or of a cited opinion of any court that is available only in a computer-based source of decisional law shall be furnished to the court and all parties by attaching it to the document in which it is cited, or, if the citation is to be made orally, within a reasonable time in advance of citation.~~

~~(Subd (c) amended effective January 1, 1997.)~~

~~(d) [Opinions ordered published by Supreme Court]~~ ~~An opinion of the Court of Appeal ordered published by the Supreme Court pursuant to rule 976 is citable.*~~

~~(Subd (d) adopted effective May 6, 1985.)~~

Rule 977 repealed effective January 1, 2005; adopted by the Supreme Court and the Judicial Council effective January 1, 1974; previously amended effective January 1, 1983, May 6, 1985, and January 1, 1997. The repealed rule related to citation of opinions.

~~* Any citation to the Court of Appeal opinion shall include reference to the grant of review and any subsequent action by the Supreme Court.~~

~~Rule 978. Requesting publication of unpublished opinions~~

~~(a) [Request procedure; action by court rendering opinion]~~ ~~A request by any person for publication of an opinion not certified for publication may be made only to the court that rendered the opinion. The request shall be made promptly by a letter stating the nature of the person's interest and stating concisely why the opinion meets one or more of the publication standards. The request shall be accompanied by proof of its service on each party to the action or proceeding in the Court of Appeal. If the court does not, or by reason of the decision's finality as to that court cannot, grant the request, the court shall transmit the request and a copy of the opinion to the Supreme Court with its recommendation for disposition and a brief statement of its reasons.~~

~~The transmitting court shall also send a copy of its recommendation and reasons to each party and to any person who has requested publication.~~

~~*(Subd (a) amended effective July 1, 1997; adopted July 1, 1975; previously amended January 1, 1983, and July 1, 1992.)*~~

~~**(b) [Action by Supreme Court]** When a request for publication is received by the Supreme Court pursuant to subdivision (a), the court shall either order the opinion published or deny the request. The court shall send notice of its action to the transmitting court, each party, and any person who has requested publication.~~

~~*(Subd (b) amended effective January 1, 1983; adopted effective July 1, 1975.)*~~

~~**(c) [Effect of Supreme Court order for publication]** An order of the Supreme Court directing publication of an opinion in the Official Reports shall not be deemed an expression of opinion of the Supreme Court of the correctness of the result reached by the decision or of any of the law set forth in the opinion.~~

~~*(Adopted effective July 1, 1975.)*~~

Rule 978 repealed effective January 1, 2005; adopted by the Supreme Court and the Judicial Council effective July 1, 1975; previously amended January 1, 1983, July 1, 1992, and July 1, 1997. The repealed rule related to requesting publication of unpublished opinions.

~~**Drafter's Notes**~~

~~**1992** Rule 978 was amended to require that letters requesting publication of unpublished opinions be served on each party to the action in the Court of Appeal. Before the amendment, the rule merely required that copies of the letter be sent to all parties, but did not require formal service or proof of service.~~

~~**Rule 979. Requesting depublication of published opinions**~~

~~**(a) [Request procedure]** A request by any person for the depublication of an opinion certified for publication shall be made by letter to the Supreme Court within 30 days after the decision becomes final as to the Court of Appeal. Any request for depublication shall be accompanied by proof of mailing to the Court of Appeal and proof of service to each party to the action or proceeding. The request shall state the nature of the person's interest and shall state concisely reasons why the opinion should not remain published. The request shall not exceed 10 pages.~~

~~**(b) [Response]** The Court of Appeal or any person may, within 10 days after receipt by the Supreme Court of a request for depublication, submit a response, either joining in the request or stating concisely reasons why the opinion should remain published. A response submitted by anyone other than the Court of Appeal shall state the nature of the person's interest. Any response shall not exceed 10 pages and shall be accompanied by proof of mailing to the Court of Appeal, and proof of service to each party to the action or proceeding, and person requesting depublication.~~

~~*(Subd (b) amended effective July 1, 1997.)*~~

~~**(c) [Action by Supreme Court]** When a request for depublication is received by the Supreme Court pursuant to subdivision (a), the court shall either order the opinion depublished or deny the request. The court shall send notice of its action to the Court of Appeal, each party, and any person who has requested depublication.~~

~~**(d) [Limitation]** Nothing in this rule limits the court's power, on its own motion, to order an opinion depublished.~~

~~**(e) [Effect of Supreme Court order for depublication]** An order of the Supreme Court directing depublication of an opinion in the Official Reports shall not be deemed an expression of opinion of the Supreme Court of the correctness of the result reached by the decision or of any of the law set forth in the opinion.~~

Rule 979 repealed effective January 1, 2005; adopted effective July 1, 1990; previously amended effective July 1, 1997. The repealed rule related to requesting depublication of published opinions.